

Act No. 40, 1899.

COMPANIES.

An Act for consolidating enactments relating to  
Companies. [22<sup>nd</sup> December, 1899.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited for all purposes as the "Companies Act, 1899," and is divided into Parts and Divisions, as follows—

PART I.—COMPANIES AND ASSOCIATIONS—

DIVISION 1.—*Constitution and incorporation*—ss. 5–17.

DIVISION 2.—*Distribution of the capital and liability of members*  
—ss. 18–66.

DIVISION 3.—*Management and administration*—ss. 67–77.

DIVISION 4.—*Winding-up*—ss. 78–165.

DIVISION 5.—*Registration office*—s. 166.

DIVISION 6.—*Companies authorised to register*—ss. 167–184.

DIVISION 7.—*Actions by unregistered companies*—s. 185.

PART

Short title and  
division of Act.  
25 & 26 Vic., c. 89,  
ss. 1, 5.  
37 Vic. No. 19, ss.  
1, 4.

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PART II.—NO-LIABILITY MINING COMPANIES—ss. 186-224.

PART III.—GENERAL PROVISIONS—ss. 225-265.

PART IV.—REFERENCE TO DISTRICT COURT—ss. 266-271.

PART V.—RECONSTRUCTED COMPANIES—ss. 272-277.

PART VI.—MISCELLANEOUS PROVISIONS APPLICABLE TO CERTAIN COMPANIES—ss. 278-284.

2. In this Act and in the Schedules thereto the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say) :—

- “Company limited by guarantee”—A company formed or registered under this Act on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound-up. 25 & 26 Vic., c. 89, s. 9.  
37 Vic. No. 19, s. 8.
- “Company limited by shares”—A company formed or registered under this Act on the principle of having the liability of its members limited to the amount unpaid on their shares. 25 & 26 Vic., c. 89, s. 8.  
37 Vic. No. 19, s. 7.
- “Court”—The Supreme Court in its equitable jurisdiction. 25 & 26 Vic., c. 89, s. 81.
- “Insurance company” shall include a company that carries on the business of insurance in common with any other business. 37 Vic. No. 19, s. 133.  
25 & 26 Vic., c. 89, s. 3.
- “Judge”—A Judge of the Supreme Court. 37 Vic. No. 19, s. 2.
- “Justice”—A justice of the peace.
- “Limited company”—A company formed or registered under this Act, wherein the liability of the members is limited either by shares or by guarantee.
- “Master”—The Master in Equity.
- “No-liability company”—A company formed or deemed to be formed under part II of this Act.
- “Registrar”—The Registrar of joint stock companies or any person acting as such. 25 & 26 Vic., c. 89, s. 17.  
37 Vic. No. 19, s. 16.
- “Special resolution”—A resolution passed in accordance with the provisions of section two hundred and forty-seven of this Act. 25 & 26 Vic., c. 89, s. 51.  
37 Vic. No. 19, s. 83.
- “Unlimited company”—A company formed or registered under this Act on the principle of having no limit placed on the liability of its members. 25 & 26 Vic., c. 89, s. 10.  
37 Vic. No. 19, s. 9.
- “Unregistered company”—Any partnership, association, or company, except railway or tramway companies incorporated by Act of Parliament, consisting of more than seven members, and not registered under part I of this Act. 25 & 26 Vic., c. 89, s. 199.  
37 Vic. No. 19, s. 243.

3. (1) The Acts mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed. Repeal.  
First Schedule.

(2) All persons appointed under or by virtue of the provisions of any Act hereby repealed and holding office at the commencement of this Act shall remain in office as if this Act had been in force at the time they were appointed and they had been appointed hereunder, and this Act shall apply to them accordingly.

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(3) All rules of Court made under the authority of any Act hereby repealed and being in force at the commencement of this Act shall be deemed to have been made under the authority of this Act, and references in any such rules to the provisions of any Act hereby repealed shall be construed as references to the corresponding provisions in this Act.

60 Vic. No. 15, s. 3.

(4) All rules, regulations, and articles of association, and every memorandum for registration, and every memorandum of association duly made or deemed to have been duly made, and all registrations duly effected or deemed to have been duly effected, and any other matter or thing duly done under or in accordance with any of the provisions of any Act hereby repealed and in force and operative at the commencement of this Act, shall be deemed to be and to have been duly made, effected, or done under the corresponding provisions of this Act, and as if this Act had been in force when the same were made, effected, or done respectively.

(5) Nothing in this Act shall be taken to affect or control the provisions of the Married Women's Property Act of 1893.

Prohibition of  
partnerships  
exceeding certain  
number.

25 & 26 Vic., c. 89,  
s. 4.

37 Vic. No. 19, s. 3.

4. (1) After the commencement of this Act—

- (a) no company, association, or partnership consisting of more than ten persons shall be formed for carrying on the business of banking; and
- (b) no company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof,

Exceptions.

Unless it is—

- (1) registered as a company under part I of this Act; or,
- (2) formed in pursuance of some other Act of Parliament, or of a royal charter or letters patent; or,
- (3) incorporated as a no-liability company; or
- (4) a company formed for mining purposes under or in pursuance of the Act twenty-fourth Victoria number twenty-one, or any Act amending or consolidating the same.

Spiritual persons.

3 Vic. No. 21.

(2) No association, co-partnership, or company, and no contract entered into between the members of or by any association, co-partnership, or company, shall be deemed to be invalid by reason only that any member thereof is a spiritual person.

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PART I.

COMPANIES AND ASSOCIATIONS.

DIVISION 1.—*Constitution and incorporation.*

5. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this part of this Act in respect of registration, form an incorporated company with or without limited liability.

Memorandum of association.  
Mode of forming company.  
25 & 26 Vic., c. 89, s. 6.  
37 Vic. No. 19, s. 5.  
Mode of limiting liability of members.  
25 & 26 Vic., c. 89, s. 7.  
37 Vic. No. 19, s. 6.

6. The liability of the members of a company formed or registered under this part of this Act may, according to the memorandum of association, be limited either to—

- (a) the amount (if any) unpaid on the shares respectively held by them; or
- (b) such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound-up.

7. The memorandum of association of a company limited by shares shall contain the following things (that is to say)—

Memorandum of association of a company limited by shares.  
25 & 26 Vic., c. 89, s. 8.  
37 Vic. No. 19, s. 7.

- (a) the name of the proposed company with the addition of the word “limited” as the last word in such name;
- (b) the place in New South Wales in which the registered office of the company is proposed to be situate;
- (c) the objects for which the proposed company is to be established;
- (d) a declaration that the liability of the members is limited;
- (e) the amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount:

Subject to the following regulations—

- (i) that no subscriber of the memorandum of association shall take less than one share;
- (ii) that each such subscriber shall write opposite to his name the number of shares he takes.

8. The memorandum of association of a company limited by guarantee shall contain the following things (that is to say)—

Memorandum of association of a company limited by guarantee.  
25 & 26 Vic., c. 89, s. 9.  
37 Vic. No. 19, s. 8.

- (a) the name of the proposed company with the addition of the word “limited” as the last word in such name;
- (b) the place in New South Wales in which the registered office of the company is proposed to be situate;
- (c) the objects for which the proposed company is to be established;
- (d) a declaration that each member undertakes to contribute to the assets of the company in the event of the same being wound-up during the time that he is a member or within one year

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year afterwards for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount.

Memorandum of association of an unlimited company.  
25 & 26 Vic., c. 89, s. 10.  
37 Vic. No. 19, s. 9.

9. The memorandum of association of an unlimited company shall contain the following things (that is to say)—

- (a) the name of the proposed company;
- (b) the place in New South Wales in which the registered office of the company is proposed to be situate;
- (c) the objects for which the proposed company is to be established.

Signature and effect of memorandum of association.

25 & 26 Vic., c. 89, s. 11.  
37 Vic. No. 19, s. 10.

10. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and shall when registered bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and as if there were in the memorandum contained a covenant on the part of himself, his heirs, executors, and administrators, to observe all the conditions of such memorandum, subject to the provisions of this Act.

Power of certain companies to alter memorandum of association.

25 & 26 Vic., c. 89, s. 12.  
37 Vic. No. 19, s. 11.

11. Any company limited by shares may so far modify the conditions contained in its memorandum of association if authorised to do so by its regulations as originally framed or as altered by special resolution in manner hereinafter mentioned as to—

- (a) increase its capital by the issue of new shares of such amount as it thinks expedient; or,
- (b) consolidate and divide its capital into shares of larger amount than its existing shares; or,
- (c) convert its paid-up shares into stock;

but, save as aforesaid, and save as is hereinafter provided in the case of a change of name and of reduction of capital, no alteration shall be made by any company in the conditions contained in its memorandum of association.

ARTICLES OF ASSOCIATION.

Regulations to be prescribed by articles of association.

25 & 26 Vic., c. 89, s. 14.  
37 Vic. No. 19, s. 13.

12. (1) The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient.

(2) The articles shall be expressed in separate paragraphs numbered arithmetically, and they may adopt all or any of the provisions contained in the Table marked A in the Second Schedule hereto.

Second Schedule.  
Table A.

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(3) In the case of a company whether limited by guarantee or unlimited the articles shall, for the purpose of enabling the Registrar to determine the fees payable on registration, state—

(a) where the capital is divided into shares, the amount of capital with which the company proposes to be registered ;

(b) where the capital is not divided into shares, the number of members with which the company proposes to be registered.

(4) In a company limited by guarantee or unlimited and having a capital divided into shares each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

**13.** In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the Second Schedule hereto, the last-mentioned regulations shall so far as the same are applicable be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

**14.** (1) The articles of association shall be printed and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

(2) When registered they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles subject to the provisions of this Act.

(3) All moneys payable by any member to the company, in pursuance of any of the conditions and regulations of the company, shall be deemed to be a specialty debt due from such member to the company.

**15.** (1) The memorandum of association and the articles of association (if any) shall be delivered to the Registrar, who shall retain and register the same.

(2) There shall be paid to the Registrar the several fees specified in Table B in the Second Schedule hereto as therein directed or such smaller fees as the Governor may direct.

**16.** (1) Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this part of this Act, or by the desire of the parties, to be registered, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

Application of table A.  
25 & 26 Vic., c. 89, s. 15.  
37 Vic. No. 19, s. 14.  
Second Schedule.

Signature and effect of articles of association.  
25 & 26 Vic., c. 89, s. 16.  
37 Vic. No. 19, s. 15.

GENERAL PROVISIONS.  
Registration of memorandum of association and articles of association.  
25 & 26 Vic., c. 89, s. 17.  
37 Vic. No. 19, s. 16.  
Effect of registration.  
25 & 26 Vic., c. 89, s. 18.  
37 Vic. No. 19, s. 17.

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(2) The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal, with power to hold lands and to sue and be sued in all courts, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound-up as is hereinafter mentioned.

(3) A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this part of this Act in respect of registration have been complied with.

Certificate to be  
evidence.  
40 & 41 Vic., c. 26,  
s. 6.  
52 Vic. No. 14, s. 6.

17. Any certificate of the incorporation of a company given by the Registrar, or by any assistant Registrar for the time being, shall be received in evidence as if it were the original certificate.

**DIVISION 2.**—*Distribution of capital and liability of members.*

**DISTRIBUTION OF  
CAPITAL.**  
Definition of  
"members."  
25 & 26 Vic., c. 89,  
s. 23.  
37 Vic. No. 19, s. 21.

18. The subscribers of the memorandum of association of any company under this part of this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and, upon the registration of the company, shall be entered as members on the register of members hereinafter mentioned, and every other person who has agreed to become a member of a company under this part of this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Register of members.  
25 & 26 Vic., c. 89,  
s. 25.  
37 Vic. No. 19, s. 23.

19. (1) Every company formed or registered under this part of this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars—

- (a) the names and addresses and the occupations (if any) of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which the name of any person was entered in the register as a member;
- (c) the date at which any person ceased to be a member.

(2) Any company acting in contravention of this section, and every director or manager of such company who knowingly and wilfully authorises or permits such contravention, shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues.

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**20.** (1) Every company formed or registered under this part of this Act having a capital divided into shares shall make once at least in every year a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company.

Annual list of members.  
25 & 26 Vic., c. 89,  
s. 26.  
37 Vic. No. 19, s. 24.

(2) Such list shall contain a summary specifying the following particulars—

- (a) the names and addresses and occupations of such members and the number of shares held by each of them ;
- (b) the amount of the capital of the company, and the number of shares into which it is divided ;
- (c) the number of shares taken from the commencement of the company up to the date of the summary ;
- (d) the amount of calls made on each share ;
- (e) the total amount of calls received ;
- (f) the total amount of calls unpaid ;
- (g) the total amount of shares forfeited ;
- (h) the names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

(3) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within seven days after such fourteenth day, as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar.

**21.** If any company formed or registered under this part of this Act having a capital divided into shares makes default in complying with the provisions of this part of this Act, with respect to forwarding such list of members or summary, as is hereinbefore mentioned, to the Registrar, such company, and every director and manager of such company who knowingly and wilfully authorises or permits such default, shall incur a penalty not exceeding five pounds for every day during which such default continues.

Penalty on company not keeping a proper register.  
25 & 26 Vic., c. 89,  
s. 27.  
37 Vic. No. 19, s. 25.

**22.** Every company formed or registered under this part of this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Registrar of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted.

Company to give notice of consolidation or of conversion of capital into stock.  
25 & 26 Vic., c. 89,  
s. 28.  
37 Vic. No. 19, s. 26.

**23.** Where any company formed or registered under this part of this Act having a capital divided into shares has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this part of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock, and the register of members hereby required to be

Effect of conversion of shares into stock.  
25 & 26 Vic., c. 89,  
s. 29.  
37 Vic. No. 19, s. 27.



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be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

Notice of increase of capital and number of members.

25 & 26 Vic., c. 89, s. 31.

37 Vic. No. 19, s. 32.

**24.** (1) Notice shall be given to the Registrar—

- (a) where a company has a capital divided into shares, whether such shares have been converted into stock or not, of any increase in such capital beyond the registered capital;
- (b) where a company has not a capital divided into shares, of any increase in the number of members beyond the registered number,

within fifteen days from the date on which such increase of capital or number of members, as the case may be, is resolved on or takes place; and the Registrar shall forthwith record the amount of such increase of capital or number of members.

(2) If such notice is not given within the period aforesaid, the company in default, and every director and manager of such company who knowingly and wilfully authorises or permits such default, shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues.

Power to keep extra-colonial registers.

46 and 47 Vic., c. 30, s. 3 (1).

48 Vic. No. 14, s. 2.

**25.** Any company formed or registered under this part of this Act whose objects comprise the transaction of business in the United Kingdom or elsewhere may, if authorised so to do by its regulations as originally framed or as altered by special resolution, cause to be kept in the United Kingdom, and in any place elsewhere within Her Majesty's Dominions in which it transacts business, a branch register of the members there resident.

Notice to Registrar.

46 and 47 Vic., c. 30, s. 3 (1).

48 Vic. No. 14, s. 3.

**26.** Such company shall give to the Registrar notice of the situation of every office where any such branch register (in this Act called an extra-colonial register) is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued.

Registers how kept or closed, &c.

46 and 47 Vic., c. 30, s. 3 (3).

48 Vic. No. 14, s. 4.

**27.** (1) An extra-colonial register shall, as regards the particulars entered therein, be deemed to be part of the company's register of members, and shall be evidence of all particulars entered therein.

(2) Every such register shall be kept in the manner provided by this part of this Act, except that the advertisement mentioned in section two hundred and forty of this Act shall be inserted in some newspaper circulating in the district wherein the register of members to be closed is kept.

Ss. 232 and 239 to apply to extra-colonial registers.

46 and 47 Vic., c. 30, s. 3 (3).

48 Vic. No. 14, s. 5.

**28.** Sections two hundred and thirty-two and two hundred and thirty-nine of this Act shall equally apply to entries in extra-colonial registers as to entries in the principal register of the company, and the Supreme Court and Judges shall have the same jurisdiction in respect of entries in such extra-colonial registers as by those sections is provided with respect to entries in the principal register of members.

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**29.** Such company shall cause to be transmitted to its registered office a copy of every entry in its extra-colonial registers, as soon as may be after such entry is made, and shall keep at such office entered up from time to time duplicates of such registers, and the provisions of section two hundred and thirty-nine of this Act shall apply to every such duplicate, and such duplicate shall for all the purposes of this Act be deemed to be part of the register of members of the company.

Duplicates of registers, &c.  
46 and 47 Vic., c. 30, s. 3 (4).  
48 Vic. No. 14, s. 6.

**30.** Subject to the foregoing provisions of this Act with respect to duplicate registers, the shares registered in an extra-colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to shares registered in an extra-colonial register shall, during the continuance of the registration of such shares therein, be registered in any other register.

Extra-colonial shares to be distinct.  
46 and 47 Vic., c. 30, s. 3 (5).  
48 Vic. No. 14, s. 7.

**31.** Such company may discontinue any extra-colonial register, and thereupon all entries in that register shall be transferred to some other register kept by the company in the same place or district, or to the register of members kept at the registered office of the company.

Discontinuance of any register.  
46 and 47 Vic., c. 30, s. 3 (6).  
48 Vic. No. 14, s. 8.

**32.** Subject to the foregoing provisions of this Act, any company may, by special resolution, make such provisions as it thinks fit respecting the keeping of extra-colonial registers.

Companies may make regulations.  
46 and 47 Vic., c. 30, s. 3 (8).  
48 Vic. No. 14, s. 9.

**33.** In the event of a company formed or registered under this part of this Act being wound-up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves with the qualifications following (that is to say) :—

LIABILITY OF MEMBERS.  
Liability of present and past members of company.  
25 & 26 Vic., c. 89, s. 38.  
37 Vic. No. 19, s. 36.

- (a) No past member shall be liable to contribute if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up.
- (b) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member.
- (c) No past member shall be liable to contribute unless it appears to the Court or other authority, in, by, or under which the company is being wound-up, that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act.
- (d) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member.

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- (e) In the case of a company limited by guarantee no contributions shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association.
- (f) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract.
- (g) No sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company, but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Companies may have directors with unlimited liability. 30 & 31 Vic., c. 131, s. 4.

37 Vic. No. 19, s. 37.

Liability of directors past and present where liability is unlimited.

30 & 31 Vic., c. 131, s. 5.

37 Vic. No. 19, s. 38.

**34.** Where a company is formed or registered as a limited company, the liability of the directors or managers of such company, or the managing director may, if so provided by the memorandum of association, be unlimited.

**35.** The following modifications shall be made in the thirty-third section of this Act with respect to the contributions to be required, in the event of the winding-up of a limited company, from any director or manager whose liability is unlimited :—

- (a) Subject to the provisions hereinafter contained any such director or manager, whether past or present, shall in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company.
- (b) No contribution required from any past director or manager, who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company.
- (c) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company.
- (d) Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member unless the court deems it

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it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up.

**36.** In the event of the winding-up of a limited company, the Court may make to any director or manager thereof, whose liability is unlimited, the same allowance by way of set-off as under section one hundred and ten of this Act it may make to a contributory where the company is not limited.

Director with unlimited liability may have set-off.  
39 & 31 Vic., c. 131, s. 6.  
37 Vic. No. 19, s. 39.

**37.** (1) In any limited company in which the liability of a director or manager is unlimited, the director or manager of the company (if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, managers, and secretary (if any) of such company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited.

Notice to be given to director on his election that his liability will be unlimited.  
20 & 31 Vic., c. 131, s. 7.  
37 Vic. No. 19, s. 40.

(2) If any director, manager, or proposer makes default in adding such statement, or if any promoter, director, manager, or secretary makes default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and also for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

**38.** (1) Any limited company may by a special resolution, if authorised so to do by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers, or of the managing director.

Existing limited company may by special resolution make liability of directors unlimited.  
30 & 31 Vic., c. 131, s. 8.

(2) Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution, and any default in this respect shall be deemed to be a default in complying with the provisions of the two hundred and fiftieth section of this Act, and shall be punished accordingly.

37 Vic. No. 19, s. 41.

**39.** (1) Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital, either by cancelling any shares which at the date of the passing of such resolution have not been taken, or agreed to be taken, by any person, or otherwise.

REDUCTION OF CAPITAL AND SHARES.  
Power to company to reduce capital.

30 & 31 Vic., c. 131, s. 9.  
37 Vic. No. 19, s. 42.  
40 & 41 Vic., c. 26, s. 5.

(2) 52 Vic. No. 14, s. 5.

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(2) No such resolution for reducing the capital of a company, except by cancelling shares as aforesaid, shall come into operation until an order of the Court is registered by the Registrar as hereinafter mentioned.

(3) Where any such company reduces its capital by cancelling any shares as aforesaid, the provisions of this Act shall not apply to any such reduction of capital.

Construction of  
"capital" and  
powers to reduce  
capital.

40 & 41 Vic., c. 26,  
s. 3.

52 Vic. No. 14, s. 3.

**40.** (1) The word "capital" as used in this part of this Act shall include paid-up capital, and the power to reduce capital conferred by this part of this Act shall include a power—

(a) to cancel any lost capital, or any capital unrepresented by available assets;

(b) to pay off any capital which may be in excess of the wants of the company.

(2) Paid-up capital may be reduced, either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and, to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, anything contained in this Act to the contrary notwithstanding.

Company to add  
"and reduced"  
to its name for a  
limited period.  
30 & 31 Vic., c. 131,  
s. 10.

37 Vic. No. 19, s. 43.

Except in certain  
cases.

40 & 41 Vic., c. 26,  
s. 4.

52 Vic. No. 14, s. 4  
(11).

**41.** (1) Such company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of this Act.

(2) Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, it shall not be necessary before the hearing of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced" as mentioned in this Act.

Company to apply  
to the Court for an  
order confirming  
reduction.

30 & 31 Vic., c. 131,  
s. 11.

37 Vic. No. 19, s. 44.

**42.** A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition the Court, if satisfied that, with respect to every creditor who, under the provisions of this Act, is entitled to object to the reduction either—

(a) his consent to the reduction has been obtained; or

(b) his debt or claim has been discharged, or has determined, or has been secured as hereinafter provided,

may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Creditors may object  
to reduction.

30 & 31 Vic., c. 131,  
s. 13.

37 Vic. No. 19, s. 45.

**43.** (1) Where a company proposes to reduce its capital, every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against

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against the company, shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object.

(2) Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the company shall not, unless the Court otherwise directs, be entitled to object or required to consent to the reduction.

Except in certain cases.  
40 & 41 Vic., c. 26, s. 4.  
52 Vic. No. 14, s. 4 (1).

(3) The Court shall settle a list of the creditors entitled to object, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor—

List of objecting creditors to be settled by the Court.  
30 & 31 Vic., c. 31, s. 13.  
37 Vic. No. 19, s. 45.

(a) the names of such creditors; and

(b) the nature and amount of their debts or claims;

and may publish notices fixing a certain day or days within which creditors who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

44. Where a creditor whose name is entered on the list of creditors and whose debt or claim is not discharged or determined does not consent to the proposed reduction, the Court may dispense with such consent on the company securing the payment of the debt or claim of such creditor, by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as hereinafter mentioned, that is to say:—

Court may dispense with consent of creditor on security being given for the defendant.  
30 & 31 Vic., c. 131, s. 14.  
37 Vic. No. 19, s. 46.

(a) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company is willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(b) If the company does not admit, or is unwilling to set apart and appropriate such full amount, or if the amount is contingent or not ascertained, the Court may inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound-up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

45. The Court may require the company to publish all or any of the following particulars in such manner as it thinks fit—

Publication of reasons for reduction of capital may be ordered.

(a) the reasons for the reduction of its capital;

(b) such other information in regard to the reduction of its capital as the Court may think expedient with a view to giving proper information to the public in relation to the reduction of its capital by the company;

40 & 41 Vic., c. 26, s. 4.  
52 Vic. No. 14, s. 4.

(c) the causes which led to such reduction.

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Order and minute to be registered.

30 & 31 Vic., c. 131, s. 15.

40 & 41 Vic., c. 26, s. 4.

37 Vic. No. 19, s. 47.

52 Vic. No. 14, s. 4.

**46.** (1) The Registrar, upon the production to him of an order of the Court, confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute, approved by the Court, showing with respect to the capital of the company as altered by the order—

(a) the amount of such capital ;

(b) the number of shares in which it is to be divided ;

(c) the amount of each share ;

(d) the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share,

shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

(2) Notice of such registration shall be published in such manner as the Court may direct.

(3) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

Minute to form part of memorandum of association.

30 & 31 Vic., c. 131, s. 16.

37 Vic. No. 19, s. 48.

**47.** (1) The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alteration as if it had been originally contained in the memorandum of association.

(2) Subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

30 & 31 Vic., c. 131, s. 17.

37 Vic. No. 19, s. 49.

**48.** (1) If any creditor who is entitled, in respect of any debt or claim, to object to the reduction of the capital of a company is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the eighty-sixth section of this Act, to pay to such creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound-up on the day prior to such registration.

(2) If the company is wound-up, the Court, on the application of such creditor and on proof that he was so ignorant as aforesaid, may

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may settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up.

(3) The provisions of this section shall not affect the rights of the contributories of the company among themselves.

**49.** (1) A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration. Copy of registered minute.  
30 & 31 Vic., c. 131, s. 18.

(2) A company which makes default in complying with the provisions of this section, and every director and manager of such company who knowingly authorises or permits such default, shall incur a penalty not exceeding one hundred pounds for each copy in respect of which such default is made. 37 Vic. No. 19, s. 50.

**50.** If any director, manager, or officer of the company— Penalty on concealment of name of creditor.

(a) wilfully conceals the name of any creditor who is entitled to object to the proposed reduction; or 30 & 31 Vic., c. 131, s. 19.

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or 37 Vic. No. 19, s. 51.

(c) being a director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of a misdemeanour.

**51.** (1) Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing shares or any of them to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association. SUBDIVISION OF SHARES.  
Shares may be divided into shares of a smaller amount.  
30 & 31 Vic., c. 131, s. 21.  
37 Vic. No. 19, s. 52.

(2) In the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing shares from which the shares of reduced amount are derived.

(3) The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution shall be in accordance with such resolution, and any company which makes default in complying with the provisions of this subsection, and every director and manager of such company who knowingly or wilfully authorises or permits such default, shall incur a penalty not exceeding one pound for each copy in respect of which such default is made. Special resolution to be embodied in memorandum of association.  
30 & 31 Vic., c. 131, s. 22.  
37 Vic. No. 19, s. 53.



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Special provisions as to associations formed for purposes not of gain.

30 & 31 Vic., c. 131, s. 23.

37 Vic. No. 19, s. 51.

**52.** (1) If any association about to be formed under this part of this Act as a limited company proves to the Governor-in-Council—

- (a) that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object; and
- (b) that it is its intention to apply its profits (if any) or other income in promoting its objects; and
- (c) that it is its intention to prohibit the payment of any dividend to the members of the association,

the Governor may by license under the hand of the Colonial Secretary direct such association to be registered with limited liability without the addition of the word “limited” to its name.

(2) Such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies, with the exception that none of the provisions of this Act that require a limited company—

- (i) to use the word “limited” as any part of its name; or
- (ii) to publish its name; or
- (iii) to send a list of its members, directors, or managers to the Registrar,

shall apply to an association so registered.

(3) The license of the Governor may be granted upon such conditions and subject to such regulations as the Governor thinks fit to impose, and such conditions and regulations shall be binding on the association, and may at the option of the Governor be inserted in the memorandum and articles of association, or in one of such documents.

**Prohibition against holding land.**

25 & 26 Vic., c. 89, s. 21.

37 Vic. No. 19, s. 55.

**53.** No association formed as in the last preceding section mentioned, shall without the sanction of the Governor hold more than two acres of land:

Provided that the Governor may, by license under the hand of the Colonial Secretary, empower any such association to hold lands in such quantity and subject to such conditions as he may think fit.

**CALLS UPON SHARES.**

Company may have some shares fully paid and others not.

30 & 31 Vic., c. 131, s. 24.

37 Vic. No. 19, s. 56.

**54.** Nothing in this Act shall be deemed to prevent any company formed or registered under this part of this Act, if authorised by its regulations as originally framed, or as altered by special resolution, from doing any one or more of the following things, namely—

- (a) making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid;
- (b) accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him either in discharge of the amount of a call payable in respect of any other shares held by him or without any call having been made;

(c)

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- (c) paying dividends in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

**55.** Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the mode of such payment has been otherwise determined by a contract duly made in writing and filed with the Registrar at or before the issue of such share.

Manner in which shares are to be issued and held.  
30 & 31 Vic., c. 131, s. 25.  
37 Vic. No. 19, s. 57.

**56.** A company shall, on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

TRANSFER OF SHARES.  
Transfer may be registered at request of transferor.  
30 & 31 Vic., c. 131, s. 26.  
37 Vic. No. 19, s. 58.

**57.** A company limited by shares, if authorised so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to shares which are fully paid up, or with respect to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise for the payment of future dividends on the shares or stock included in such warrant, hereinafter referred to as a share warrant.

SHARE WARRANTS TO BEARER.  
Warrant of limited shares fully paid up may be issued in name of bearer.  
30 & 31 Vic., c. 131, s. 27.  
37 Vic. No. 19, s. 59.

**58.** A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

EFFECT OF SHARE WARRANT.  
30 & 31 Vic., c. 131, s. 28.  
37 Vic. No. 19, ss. 59, 60.

**59.** (1) The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members.

Re-registration of bearer of a share warrant in the register.

(2) The company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

30 & 31 Vic., c. 131, s. 29.  
37 Vic. No. 19, s. 61.

**60.** The bearer of a share warrant may, if the regulations of a company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations :

Regulations of the company may make the bearer of a warrant a member.  
30 & 31 Vic., c. 131, s. 30.

Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant to be a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

37 Vic. No. 19, s. 62.

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Entries in register  
where share warrant  
issued.

30 & 31 Vic., c. 131,  
s. 31.

37 Vic. No. 19, s. 63.

**61.** (1) On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars—

- (a) the fact of the issue of the warrant ;
- (b) a statement of the shares or stock included in the warrant, distinguishing each share by its number ;
- (c) the date of the issue of the warrant.

(2) Until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the nineteenth section of this Act to be entered in the register of members of a company.

(3) On the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Particulars to be  
contained in annual  
summary.

30 & 31 Vic., c. 131,  
s. 32.

37 Vic. No. 19, s. 64.

**62.** After the issue by the company of a share warrant the annual summary required by the twentieth section of this Act shall contain the following particulars—

- (a) the total amount of shares or stock for which share warrants are outstanding at the date of the summary ;
- (b) the total amount of share warrants which have been issued and surrendered respectively since the last summary was made ;
- (c) the number of shares or amount of stock comprised in each warrant.

Persons committing  
forgery.

30 & 31 Vic., c. 131,  
s. 34.

37 Vic. No. 19, s. 65.

**63.** Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon issued in pursuance of this part of this Act, or demands or endeavours to obtain or receive any share or interest of or in any company under this part of this Act, or to receive any dividend or money payable in respect thereof by virtue of any such forged or altered share warrant or coupon or document purporting as aforesaid, knowing the same to be forged or altered with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and upon being convicted thereof shall be liable to be imprisoned for any term not less than two years, with or without hard labour.

Persons falsely  
personating owners  
of shares.

30 & 31 Vic., c. 131,  
s. 35.

37 Vic. No. 19, s. 66.

**64.** Whosoever falsely and deceitfully personates any owner of any shares or interest of or in any company, or of any share warrant or coupon issued in pursuance of this part of this Act, and thereby obtains or endeavours to obtain any such share or interest, or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender was the true and lawful owner, shall be guilty of felony, and upon being convicted thereof shall be liable to be imprisoned for any term not less than two years, with or without hard labour.

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**65.** Whosoever without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company under and in pursuance of this part of this Act, or to be a blank share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or any such blank share warrant or coupon or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other materials shall be guilty of felony, and upon being convicted thereof shall be liable to be imprisoned for any term not less than two years, with or without hard labour.

Persons engraving plates, &c.  
30 & 31 Vic., c. 131, s. 36.  
37 Vic. No. 19, s. 67.

**66.** Every prospectus of a company to be formed under this part of this Act, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the names of the parties to and date of any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company or otherwise. And any prospectus not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he has had notice of such contract.

Prospectus, &c., to specify dates and names of parties to any contract made prior to issue of such prospectus, &c.  
30 & 31 Vic., c. 131, s. 38.  
37 Vic. No. 19, s. 69.

**DIVISION 3.—Management and administration.**

**67.** Every limited company shall—

- (a) paint or affix and keep painted or affixed its name on the outside of every office or place in which the business of the company is carried on in a conspicuous position in letters easily legible; and
- (b) have its name engraved in legible characters on its seal; and
- (c) have its name mentioned in legible characters;
  - (i) in all notices, advertisements, and other official publications of the company;
  - (ii) in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company;
  - (iii) in all bills of parcels, invoices, receipts, and letters of credit of the company.

**PROVISIONS FOR PROTECTION OF CREDITORS.**

Publication of name by a limited company.  
25 & 26 Vic., c. 89, s. 41.  
37 Vic. No. 19, s. 73.

**68.** (1) Any limited company which does not paint or affix and keep painted or affixed its name in manner directed by this part of this Act, and every director or manager of such company who knowingly and wilfully authorises or permits such default, shall be liable

Penalties on non-publication of name.  
25 & 26 Vic., c. 89, s. 42.  
37 Vic. No. 19, s. 74.

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liable to a penalty not exceeding five pounds for not so painting or affixing its name and a further penalty not exceeding five pounds for every day during which such name is not kept so painted or affixed.

(2) If any director, manager, or officer of such company, or any person on its behalf—

(a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid; or

(b) issues or authorises the issue of any notice, advertisement, or other official publication of such company, or signs or authorises to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, or order for money or goods without its name being mentioned therein in manner aforesaid; or

(c) issues or authorises to be issued any bill of parcels, invoice receipt, or letter of credit of the company,

he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof unless the same is duly paid by the company.

Certain companies to publish statements.

25 & 26 Vic., c. 89, s. 44.

37 Vic. No. 19, s. 76.

Second Schedule, Form C.

**69.** (1) Every limited banking company, and every insurance company, and deposit, provident, or benefit society, registered under this Act, shall, before it commences business, and also on the first Monday in February, and the first Monday in August, in every year during which it carries on business, make a statement in the Form marked C in the Second Schedule hereto, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(2) If default is made in compliance with the provisions of this section, the company, and every director or manager thereof, who knowingly and wilfully authorises or permits such default, shall be liable to a penalty not exceeding five pounds for every day during which such default continues.

(3) Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence.

List of directors to be sent to Registrar.

25 & 26 Vic., c. 89, s. 45.

37 Vic. No. 19, s. 77.

**70.** Every company formed or registered under this part of this Act, not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

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**71.** If any such company makes default in respect of any of the matters in the preceding section mentioned, such company, and every director or manager of such company who knowingly and wilfully authorises or permits such default, shall incur a penalty not exceeding five pounds for every day during which such default continues.

Penalty on company not keeping register of directors.  
25 & 26 Vic., c. 89, s. 46.  
37 Vic. No. 19, s. 78.

**72.** (1) Subject to the provisions of this Act and to the conditions contained in the memorandum of association, any company formed under this part of this Act, may, in general meeting, from time to time, by passing a special resolution—

PROVISIONS FOR PROTECTION OF MEMBERS.  
Power to alter regulations by special resolution.  
24 & 26 Vic., c. 89, s. 50.  
37 Vic. No. 19, s. 82.  
Second Schedule.  
Table A.

(a) alter all or any of the regulations of the company contained in the articles of association, or in the Table marked A in the Second Schedule, where such table is applicable to the company; or

(b) make new regulations to the exclusion of, or in addition to, all or any of the regulations of the company.

(2) Any regulations so made by special resolution shall be deemed to be regulations of the company, of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

**73.** In any action or suit brought by a company against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made, or other moneys due, whereby an action or suit has accrued to the company.

Declaration in action against members.  
25 & 26 Vic., c. 89, s. 70.  
37 Vic. No. 19, s. 100.

**74.** (1) The forms set forth in the Third Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

Alteration of forms.  
25 & 26 Vic., c. 89, s. 71.  
37 Vic. No. 19, s. 101.

(2) The Governor may make such alterations in the Tables and Forms contained in the Second and Third Schedules hereto, or such additions to the Forms contained in the Third Schedule as he deems requisite; but no such alteration shall increase the amount of fees payable to the Registrar in the Second Schedule mentioned.

Second and Third Schedules.

(3) Any such table or form when altered shall be published in the Gazette, and upon such publication being made such table or form shall have the same force as if it were included in the Schedule to this Act, but no alteration made by the Governor in the Table marked A contained in the Second Schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table.

Second Schedule.  
Table A.

**75.** (1) Any company formed or registered under this part of this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration in accordance with the provisions

ARBITRATIONS.  
Power for companies to refer matters to arbitration.  
25 & 26 Vic., c. 89, s. 27.  
37 Vic. No. 19, s. 102.

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provisions of the Arbitration Act, 1892, or any Act amending or consolidating the same, any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company, or person.

(2) The parties to the arbitration may delegate to the persons, to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by themselves, or by their directors or other managing body.

Provisions of 55 Vic.  
No. 32 to apply.  
25 & 26 Vic., c. 89, s.  
73.

Appointment of  
arbitrators.

37 Vic. No. 19, s. 104.

**76.** All the provisions of the Arbitration Act, 1892, or any Act amending or consolidating the same, shall be deemed to apply, so far as they are applicable, to arbitrations in pursuance of this part of this Act.

**77.** Every appointment of an arbitrator shall be made—

- (a) on the part of such company,
  - (i) under its common seal; or
  - (ii) under the hand of the manager or secretary or any two directors of the company; or
  - (iii) under the hand of the liquidator if the company is in liquidation.
- (b) on the part of any other party, under the hand of such party;
- (c) on the part of a corporation aggregate, under the common seal of such corporation.

DIVISION 4.—*Winding-up.*

Jurisdiction in  
Chambers.

25 & 26 Vic., c. 89,  
s. 83.  
37 Vic. No. 19, s. 136.

PRELIMINARY.  
Meaning of  
"Contributory."

25 & 26 Vic., c. 89,  
s. 74.  
37 Vic. No. 19, s. 126.

25 and 26 Vic., c. 89,  
s. 200.

37 Vic. No. 19, s. 244.

**78.** Any of the powers vested in the Court by this division of this Act may be exercised in Chambers by the Chief Judge or Judge in Equity.

**79.** (1) The term "contributory" shall mean every person liable to contribute to the assets of a company formed or registered under this part of this Act in the event of the same being wound-up, and shall also in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such proceedings, include any person alleged to be a contributory.

(2) In the event of an unregistered company being wound-up, every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of—

- (a) any debt or liability of such company; or
  - (b) any sum for the adjustment of the rights of the members amongst themselves; or
  - (c) the costs, charges, and expenses of winding-up;
- and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid.

25 & 26 Vic., c. 89,  
s. 196.

37 Vic. No. 19, s.  
240 (5).

(3) In the event of a company registered under the provisions of division six of this part of this Act being wound-up, in addition to the persons liable as contributories under subsection (1) of this section,

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section, every person shall be a contributory in respect of the debts and liabilities of the company contracted prior to registration who is liable to pay or contribute to the payment of—

- (a) any debt or liability of the company contracted prior to registration; or
- (b) any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or
- (c) the costs, charges, and expenses of winding-up the company so far as relates to such debts or liabilities as aforesaid;

and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid.

**80.** (1) The liability of any person to contribute to the assets of a company in the event of the same being wound-up under this part of this Act, shall be deemed to create a debt of the nature of a specialty accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability.

*Liability of contributory.*

25 & 26 Vic., c. 89, ss. 75, 196, 199.  
37 Vic. No. 19, ss. 127, 240, 243.

(2) In the case of the bankruptcy of any contributory, or person deemed to be a contributory, the estimated value of his liability to future calls, as well as calls already made, may be proved in his estate.

**81.** If any contributory, or person deemed to be a contributory, dies, either before or after he has been placed on the list of contributories hereinafter mentioned, his executors or administrators shall be liable, in due course of administration, to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such executors and administrators shall be deemed to be contributories accordingly.

*Contributories in case of death.*

25 & 26 Vic., c. 89, ss. 76, 196 (5), 200.  
37 Vic. No. 19, ss. 128, 240 (5), 244.

**82.** If any contributory, or person deemed to be a contributory, becomes bankrupt, either before or after he has been placed on the list of contributories, his assignee or trustee shall be deemed to represent such contributory for all the purposes of the winding-up, and shall be deemed to be a contributory accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such bankrupt in respect of his liability to contribute to the assets of the company being wound-up.

*Contributories in case of bankruptcy.*

25 & 26 Vic., c. 89, ss. 77, 196 (5), 200.  
37 Vic. No. 19, ss. 129, 240 (5), 244.

**83.** If any female contributory, or female deemed to be a contributory, marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.

*Contributories in case of marriage.*

*Ibid.* ss. 78, 196 (5), 200.  
*Ibid.* ss. 130, 240 (5), 244.

**84.**



*Companies.***WINDING-UP BY THE COURT.**

Under what circumstances companies may be wound-up by the Court.

25 & 26 Vic., c. 89, ss. 79, 199 (3).

37 Vic. No. 19, ss. 131, 243 (3).

**84.** Companies may be wound-up by the Court under this part of this Act under the following circumstances (that is to say):—

In the case of a company formed or registered under this part of this Act—

- (a) whenever the company has passed a special resolution requiring the company to be wound-up by the Court ;
- (b) whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year ;
- (c) whenever the members are reduced in number to less than seven ;
- (d) whenever the company is unable to pay its debts ;
- (e) whenever the Court is of opinion that it is just and equitable that the company should be wound-up.

In the case of an unregistered company—

- (f) whenever the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs ;

and also under the circumstances set out in subsections (d) and (e) of this section.

Power to refer winding-up to Master.

25 & 26 Vic., c. 89, s. 81.

37 Vic. No. 19, s. 133.

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**85.** (1) The Court in making an order under this part of this Act for winding-up a company may direct all subsequent proceedings for winding-up the same to be had and taken before the Master, and the Master shall for such winding-up have all the powers of the Court, subject, however, to appeal to the Court.

(2) The Master may refer any matter to the Court which he may think proper to be determined by the Court.

Company when deemed unable to pay its debts.

25 & 26 Vic., c. 89, ss. 80, 199 (4).

37 Vic. No. 19, ss. 132, 243 (4).

**86.** A company shall be deemed to be unable to pay its debts—  
In the case of a company formed or registered under this part of this Act—

- (a) whenever a creditor, by assignment or otherwise, to whom the company is indebted at law or in equity in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor ;
- (b) whenever execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the company is returned unsatisfied in whole or in part ;
- (c) whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.

**In**

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In the case of an unregistered company—

- (d) under the circumstances set out in subsection (a) of this section, except that the service required shall be effected by leaving the demand therein mentioned at the principal place of business of the company, or by delivery of the same to the secretary or some director or principal officer of the company, or in such manner as the Court may approve or direct; or
- (e) under the circumstances set out in subsection (b) of this section, except that the execution therein mentioned shall further extend to execution or other process issued on a judgment, decree, or order obtained in any proceeding against any member of the company, as such, or against any person authorised to be sued as nominal defendant on behalf of the company; or
- (f) under the circumstances set out in subsection (c) of this section; or
- (g) whenever—
  - (i) any action, suit, or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company; and
  - (ii) notice in writing of the institution of such action, suit, or other proceeding has been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct; and
  - (iii) the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against such suit, action, or other proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same.

**87.** The principal place of business of an unregistered company shall for all the purposes of the winding-up of such company be deemed to be the registered office of the company.

**88.** No unregistered company shall be wound-up under this part of this Act, voluntarily, or subject to the supervision of the Court.

**89.** (1) Any application to the Court under this part of this Act for the winding-up of a company shall be by petition, and such petition may be presented—

- (a) by the company; or
- (b) by any creditor or contributory of the company; or
- (c) by all or any of the above parties together or separately.

(2)

Place of business of unregistered company deemed to be registered office.  
 25 & 26 Vic., c. 89, s. 199(1).  
 37 Vic. No. 19, s. 243 (1)  
 Unregistered company not to be wound-up voluntarily.  
 25 & 26 Vic., c. 89, s. 199 (2).  
 37 Vic. No. 19, s. 243 (2).  
 Application for winding-up to be made by petition.  
 25 & 26 Vic., c. 89, s. 82.  
 37 Vic. No. 19, s. 134.

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(2) Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Contributory when not qualified to prevent winding-up by petition.

30 & 31 Vic., c. 131, s. 40.

37 Vic. No. 19, s. 135.

**90.** (1) No contributory of a company under this part of this Act shall be capable of presenting a petition for winding-up such company, unless—

(a) the members of such company are reduced in numbers to less than seven; or

(b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him and registered in his name for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former owner.

(2) Where a share has during the whole or any part of the six months been held by or registered in the name of—

(a) the wife of a contributory either before or after her marriage; or

(b) any trustee for such wife or for the contributory, such share shall for the purposes of this section be deemed to have been held by, and registered in the name of, the contributory.

Commencement of winding-up by the Court.  
25 & 26 Vic., c. 89, s. 84.  
37 Vic. No. 19, s. 137.

Court may grant injunction.

25 & 26 Vic., c. 89, ss. 85, 197, 201.

37 Vic. No. 19, ss. 138, 244, 245.

**91.** A winding-up by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

**92.** (1) The Court may at any time after the presentation of a petition for winding-up and before making an order for winding-up—

(a) in the case of a company formed under the provisions of this part of this Act, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company;

(b) in the case of a company registered under the provisions of division six of this part of this Act, or unregistered, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or proceeding against any contributory of the company, as well as against the company as hereinbefore provided,

upon such terms as the Court thinks fit.

(2) The Court may also at any time after the presentation of such petition and before the first appointment of liquidators appoint provisionally an official liquidator of the estate and effects of the company.

Course to be pursued by Court on hearing petition.

25 & 26 Vic., c. 89, s. 86.

37 Vic. No. 19, s. 139.

**93.** Upon hearing the petition the Court may dismiss the same with or without costs, or may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

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**94.** When an order has been made under this part of this Act for winding-up a company no suit, action, or other proceeding shall, except with the leave of the Court and subject to such terms as the Court may impose, be proceeded with or commenced against such company, or, if the company is registered under the provisions of division six of this part of this Act, or unregistered, against any contributory of such company, in respect of any debt of such company.

Actions to be stayed after order for winding-up.  
25 & 26 Vic., c. 89, ss. 87, 198, 202.  
37 Vic. No. 19, ss. 140, 242, 246.

**95.** Where any company is being wound-up by the Court, or under the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of such company after the commencement of the winding-up shall be void to all intents.

Certain attachments, sequestrations, and executions to be void.  
25 & 26 Vic., c. 89, s. 109.  
37 Vic. No. 19, s. 214.

**96.** When an order has been made under this part of this Act for winding-up a company, a copy of such order shall forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company.

Copy of order to be forwarded to the Registrar.  
25 & 26 Vic., c. 89, s. 88.  
37 Vic. No. 19, s. 141.

**97.** The Court may at any time after an order has been made for winding-up a company, upon the application of any creditor or contributory of such company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Power of Court to stay proceedings.  
25 & 26 Vic., c. 89, s. 89.  
37 Vic. No. 19, s. 142.

**98.** (1) The general provisions of this part of this Act with respect to winding-up companies shall apply to unregistered companies and to companies registered under division six of this part of this Act, but subject to the special provisions of this Act with regard to such companies respectively.

Provisions to apply to unregistered companies, &c.  
25 & 26 Vic., c. 89, ss. 196, 199, 204.  
37 Vic. No. 19, ss. 240, 243, 248.

(2) The special provisions in this Act relating to unregistered companies and to companies registered under division six of this part of this Act shall be deemed to be made in addition to and not in restriction of such general provisions; and the Court or official liquidator may, in addition to any special thing contained in this part of this Act, exercise any powers or do any act in the case of such companies which may be exercised or done by it or him in winding-up companies formed under this Act.

(3) An unregistered company shall not, except with respect to a winding-up, be deemed to be a company under this part of this Act, and then only to the extent herein provided.

**99.** When an order has been made for winding-up a company, limited by guarantee, and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt of the nature of a specialty due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Effect of winding-up order on share capital of company limited by guarantee.  
25 & 26 Vic., c. 89, s. 90.  
37 Vic. No. 19, s. 143.

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Court may have regard to wishes of creditors or contributories.

25 & 26 Vic., c. 89, s. 91.

37 Vic. No. 19, s. 144.

**100.** (1) The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may if it thinks it expedient direct meetings of the creditors or contributories to be summoned, held, and conducted, in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

(2) In the case of creditors regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

OFFICIAL LIQUIDATORS.

Appointment of official liquidator.

25 & 26 Vic., c. 89, s. 92.

37 Vic. No. 19, s. 151.

**101.** (1) For the purpose of conducting the proceedings in winding-up and assisting the Court therein there may be appointed by the Court by which the order for winding-up is made persons to be called official liquidators, and the Court may appoint such persons either provisionally or otherwise as it thinks fit to the office of official liquidators.

(2) In all cases if more persons than one are appointed to the office of official liquidator the Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons.

(3) The Court may also determine whether any and what security is to be given by any official liquidator on his appointment.

(4) If no official liquidator is appointed or during any vacancy in such appointment all the property of the company being wound-up shall be deemed to be in the custody of the Court.

Resignation—removal—compensation.

25 & 26 Vic., c. 89, s. 93.

37 Vic. No. 19, s. 152.

**102.** (1) Any official liquidator may resign or be removed by the Court on due cause shown, and any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court.

(2) There shall be paid to the official liquidator such salary or remuneration by way of percentage or otherwise as the Court may direct, and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs.

Style and duties of official liquidator.

25 & 26 Vic., c. 89, s. 94.

37 Vic. No. 19, s. 153.

**103.** (1) The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed and not by his individual name.

(2) The official liquidator shall take into his custody or under his control all the property, effects, and choses in action to which such company is or appears to be entitled, and shall perform such duties in reference to the winding-up as may be imposed by the Court.

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- 104.** The official liquidator shall have power with the sanction of the Court to—
- (a) bring or defend any action, suit, or prosecution, or other legal proceeding in the name and on behalf of the company;
  - (b) carry on the business of the company so far as may be necessary for the beneficial winding-up of the same;
  - (c) sell the real and personal property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
  - (d) do all acts and execute in the name and on behalf of the company all deeds, receipts, agreements of reference or submissions to arbitration and other documents, and for that purpose to use when necessary the company's seal;
  - (e) prove, rank, claim, and draw a dividend in the matter of the bankruptcy or insolvency of any contributory for any balance against the estate of such contributory, and take and receive dividends in respect of such balance in the matter of bankruptcy or insolvency as a separate debt due from such bankrupt or insolvent and rateably with the other separate creditors;
  - (f) draw, accept, make, and indorse any bill of exchange or promissory-note in the name and on behalf of the company, and raise upon the security of the assets of the company any requisite sums of money; and the drawing, accepting, making, or indorsing of every such bill of exchange or promissory-note as aforesaid on behalf of such company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of such company in the course of carrying on the business thereof;
  - (g) take out if necessary in his official name, letters of administration to any deceased contributory, and do in his official name such other acts as may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall for the purpose of enabling him to take out such letters or recover such moneys be deemed to be due to the official liquidator himself;
  - (h) do and execute all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

Powers of official liquidator.

25 & 26 Vic. c. 89, s. 95.

37 Vic. No. 19, s. 15.

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Discretion of official liquidator.

25 & 26 Vic. c. 89, s. 96.

37 Vic. No. 19, s. 155.

**105.** The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Solicitor to official liquidator.  
25 & 26 Vic., c. 89, s. 97.  
37 Vic. No. 19, s. 156.

**106.** The official liquidator may with the sanction of the Court appoint a solicitor to assist him in the performance of his duties.

ORDINARY POWERS  
OF COURT.

Order for collection of assets.

25 & 26 Vic., c. 89, s. 98.

37 Vic. No. 19, s. 157.

**107.** As soon as may be after making an order for winding-up a company the Court shall—

- (a) settle a list of contributories with power to rectify the register of members in all cases where such rectification is required in pursuance of this part of this Act; and
- (b) cause the assets of the company to be collected and applied in discharge of its liabilities.

Provision as to representative contributories.

25 & 26 Vic., c. 89, s. 99.

37 Vic. No. 19, s. 158.

**108.** (1) In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable for the debts of others.

(2) It shall not be necessary where the personal representative of any deceased contributory is placed on the list to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the Court thinks fit.

Power of Court to require delivery of property.

25 & 26 Vic., c. 89, s. 100.

37 Vic. No. 19, s. 159.

**109.** The Court may, at any time after making an order for winding-up a company, require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, or agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Power of Court to order payment of debts by contributory.

25 & 26 Vic., c. 89, s. 101.

37 Vic. No. 19, s. 160.

**110.** (1) The Court may at any time after making an order for winding-up a company make an order on any contributory for the time being settled on the list of contributories directing payment to be made in manner in the said order mentioned of any moneys due from him or from the estate of the person whom he represents to the company, exclusive of any moneys which he or such estate may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this division of this part of this Act.

(2) In making such order when a company is not limited, the Court may allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit.

(3)

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(3) When all the creditors of a company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent calls.

**111.** (1) The Court may at any time after making an order for winding-up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories to the extent of their liability for payment of all or any sums it deems necessary—

- (a) to satisfy the debts and liabilities of the company ;
- (b) to satisfy the costs, charges, and expenses of winding-up ; and
- (c) for the adjustment of the rights of the contributories amongst themselves.

(2) The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

**112.** The Court may order any contributory, purchaser, or other person from whom money is due to the company being wound-up to pay the same into a bank, to be named by the Court, to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

**113.** All moneys, bills, notes, and other securities so paid and delivered into such bank shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in or investment and payment and delivery out of the same as the Court may direct.

**114.** If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory or either of such estates, and of compelling payment thereof of the moneys due.

**115.** Any order made by the Court in pursuance of this part of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys (if any) thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever.

**116.** The Court may fix a certain day or certain days on or within which creditors of the company being wound-up are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

**117.** 17 Vic. No. 19, s. 166.



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Court to adjust rights of contributories.

25 & 26 Vic., c. 89, s. 109.

37 Vic. No. 19, s. 167.

Court to order costs.

25 & 26 Vic., c. 89,

s. 110.

37 Vic. No. 19, s. 168.

Dissolution of company.

25 & 26 Vic., c. 89,

s. 111.

37 Vic. No. 19, s. 169.

Registrar to make minute of dissolution.

25 & 26 Vic., c. 89, s. 112

37 Vic. No. 19, s. 170.

Penalty on not reporting dissolution.

25 & 26 Vic., c. 89,

s. 113.

37 Vic. No. 19, s. 171.

Petition to be

*lis pendens*.

25 & 26 Vic., c. 89, s. 114.

37 Vic. No. 19, s. 172.

EXTRAORDINARY POWERS OF COURT.

Powers of Court to summon persons

suspected of having

property of the

company.

25 & 26 Vic., c. 89,

s. 115.

37 Vic. No. 19, s. 173.

37 Vic. No. 19, s. 173.

37 Vic. No. 19, s. 173.

37 Vic. No. 19, s. 173.

37 Vic. No. 19, s. 173.

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37 Vic. No. 19, s. 173.

37 Vic. No. 19, s. 173.

37 Vic. No. 19, s. 173.

37 Vic. No. 19, s. 173.

**117.** The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

**118.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company being wound-up of the costs, charges, and expenses incurred in winding-up in such order or priority as the Court thinks just.

**119.** When the affairs of a company have been completely wound-up, the Court shall make an order that such company be dissolved from the date of such order, and such company shall be dissolved accordingly.

**120.** Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

**121.** If the official liquidator makes default in reporting to the Registrar, in the case of a winding-up by the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

**122.** Any petition for winding-up by the Court under this part of this Act shall constitute a *lis pendens*.

**123.** (1) The Court may, after it has made an order for winding-up a company, summon before it—

- (a) any officer of the company ; or
- (b) any person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company ; or
- (c) any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company ;

and may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company.

(2) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and allowed by it) the Court may cause such person to be apprehended and brought before the Court for examination.

(3) In cases where any person claims any lien on papers, deeds, writings, or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

**124.** The Court may examine upon oath, either orally or upon written interrogatories, any person appearing or brought before

Examination before the Court.

25 & 26 Vic. c. 89, s. 117.

37 Vic. No. 19, s. 174.

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before them in manner aforesaid concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

**125.** The Court may at any time before or after it has made an order for winding-up a company, upon proof being given that there is probable cause for believing that any contributory is about to quit New South Wales or otherwise abscond, or to remove or conceal any of his goods or chattels for the purpose of evading payment of calls or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Power to arrest absconding contributory.  
25 & 26 Vic., c. 89, s. 118.  
37 Vic. No. 19, s. 175.

**126.** Any powers by this part of this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers subsisting either at law or in equity of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly.

Powers of Court cumulative.  
25 & 26 Vic., c. 89, s. 119.  
37 Vic. No. 19, s. 176.

**127.** All orders made by the Court under this part of this Act may be enforced in the same manner in which orders of the Court made in any suit pending therein may be enforced.

ENFORCEMENT OF AND APPEAL FROM ORDERS.

**128.** Any order or decision made or given in the matter of a winding-up by the Court may be reheard or appealed from within the same time, and in the same manner, and subject to the same conditions in and subject to which appeals may be had from any order or decision of the Chief Judge or Judge in Equity in cases within their ordinary jurisdiction.

Power to enforce  
25 & 26 Vic., c. 89, s. 120.  
37 Vic. No. 19, s. 177.  
Appeals from orders.  
25 & 26 Vic., c. 89, s. 121.  
37 Vic. No. 19, s. 178.

**129.** (1) Any affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this division of this part of this Act may be lawfully sworn or made in any of Her Majesty's dominions, before any Court, Judge, or person lawfully authorised to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions.

Affidavits, &c., may be sworn before certain persons.  
25 & 26 Vic., c. 89, s. 128.  
37 Vic. No. 19, s. 179.

(2) All Courts, Judges, Justices, commissioners, and persons acting judicially shall take judicial notice of the seal, or stamp, or signature (as the case may be) of any such Court, Judge, person, Consul, or Vice-Consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this division of this part of this Act.

VOLUNTARY WINDING-UP OF COMPANY

**130.** (1) A company formed or registered under this part of this Act may be wound-up voluntarily whenever—

Circumstances under which company may be wound-up voluntarily.

(a) the period (if any) fixed for the duration of the company by the articles of association expires, or the event (if any)

25 & 26 Vic., c. 89, s. 129.

occurs 37 Vic. No. 19, s. 180.

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occurs upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound-up voluntarily ;

- (b) the company has passed a special resolution requiring the company to be wound-up voluntarily ;
- (c) the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind-up the same.

(2) For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution.

Commencement of  
voluntary winding-up.  
25 & 26 Vic., c. 89, s. 130.  
37 Vic. No. 19, s. 181.

Effect of voluntary  
winding-up.

25 & 26 Vic., c. 89,  
s. 131.

37 Vic. No. 19, s. 182.

**131.** A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising such winding-up.

**132.** (1) Whenever a company is wound-up voluntarily the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof.

(2) All transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company, taking place after the commencement of such winding-up, shall be void.

(3) The corporate state and all the corporate powers of such company shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound-up.

Notice of resolution to  
wind-up voluntarily.  
25 & 26 Vic., c. 89, s. 132.  
37 Vic. No. 19, s. 183.

**133.** Notice of any special resolution or extraordinary resolution passed for winding-up a company voluntarily shall be given by advertisement in the Gazette.

Consequences of  
voluntary winding-  
up.

25 & 26 Vic., c. 89,  
s. 133.

37 Vic. No. 19, s. 184.

**134.** The following consequences shall ensue upon the voluntary winding-up of a company :—

- (a) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and subject thereto shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company.
- (b) Liquidators shall be appointed for the purpose of winding-up the affairs of the company and distributing the property.
- (c) The company in general meeting shall appoint such persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them.
- (d) If one person only is appointed all the provisions herein contained in reference to several liquidators shall apply to him.

(c)

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- (e) Upon the appointment of liquidators all the powers of the directors shall cease except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers.
- (f) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two.
- (g) The liquidators may, without the sanction of the Court, exercise all powers by this part of this Act given to the official liquidator.
- (h) The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be prima facie evidence of the liability of the persons named therein to be contributories.
- (i) The liquidators may at any time after the passing of the resolution for winding-up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.
- (j) The liquidators shall pay the debts of the company and adjust the rights of the contributories amongst themselves.

**135.** Where a company limited by guarantee and having a capital divided into shares is being wound-up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him and payable at such time as may be appointed by the liquidators.

Effect of voluntary winding up on share capital of company limited by guarantee.  
25 & 26 Vic., c. 89, s. 134.  
37 Vic. No. 19, s. 185.

**136. (1)** A company about to be or in the course of being wound-up voluntarily may by an extraordinary resolution—

Power of company to delegate appointment of liquidators.  
25 & 26 Vic., c. 89, s. 135.  
37 Vic. No. 19, s. 186.

- (a) delegate to its creditors or to any committee of its creditors the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators; or
- (b) enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised.

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(2) Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.

Power for liquidators or contributories in voluntary winding-up to apply to Court.

25 & 26 Vic., c. 89, s. 138.

37 Vic. No. 19, s. 180.

**137.** (1) Where a company is being wound-up voluntarily the liquidators or any contributory of the company may apply to the Court—

- (a) to determine any question arising in the matter of such winding-up; or
- (b) to exercise as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound-up by the Court.

(2) The Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Power of liquidator call general meetings.

25 & 26 Vic., c. 89, s. 139.

37 Vic. No. 19, s. 190.

**138.** (1) Where a company is being wound-up voluntarily the liquidators may, during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution or for any other purposes they think fit.

(2) In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding-up or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings and the manner in which the winding-up has been conducted during the preceding year.

Power to fill up vacancy in liquidators.

25 & 26 Vic., c. 89, s. 140.

37 Vic. No. 19, s. 191.

**139.** (1) If any vacancy occurs in the office of liquidators appointed by the company by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy.

(2) A general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators (if any) or by any contributory of the company, and shall be deemed to have been duly held, if held in manner prescribed by the regulations of the company or in such other manner as may on application by the continuing liquidators (if any) or by any contributory of the company be determined by the Court.

Power of Court to appoint liquidators.

25 & 26 Vic., c. 89, s. 141.

37 Vic. No. 19, s. 192.

**140.** (1) If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the Court may on the application of a contributory appoint a liquidator.

(2) The Court may also on due cause shown remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up.

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**141.** (1) As soon as the affairs of the company are fully wound-up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the company disposed of, and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators.

Liquidators on conclusion of winding-up to make up an account.  
25 & 26 Vic., c. 89, s. 142.  
37 Vic. No. 19, s. 193.

(2) The meeting shall be called by advertisement specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the Gazette, and in one or more newspapers circulating in the district in which the registered office of the company is situated.

**142.** (1) The liquidators shall make a return to the Registrar—

Liquidators to report meeting to the registrar.

(a) of such meeting having been held; and

25 & 26 Vic., c. 89, s. 143.

(b) of the date at which the same was held.

(2) On the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved.

37 Vic. No. 19, s. 194.

(3) If the liquidators make default in making such return to the Registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues.

**143.** All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Costs of voluntary liquidation.  
25 & 26 Vic., c. 89, s. 144.  
37 Vic. No. 19, s. 195.

**144.** The voluntary winding-up of a company shall not be a bar to the right of any creditor to have the same wound-up by the Court if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Saving rights of creditors.  
25 & 26 Vic., c. 89, s. 145.  
37 Vic. No. 19, s. 196.

**145.** Where a company is in course of being wound-up voluntarily and proceedings are taken for the purpose of having the same wound-up by the Court, the Court may, notwithstanding that it makes an order directing the company to be wound-up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Power of Court to adopt proceedings of voluntary winding-up.  
25 & 26 Vic., c. 89, s. 146.  
37 Vic. No. 19, s. 197.

**146.** When a resolution has been passed by a company to wind-up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but—

WINDING-UP, SUBJECT TO THE SUPERVISION OF THE COURT.

(a) subject to such supervision of the Court; and

Power of Court on application to direct winding-up, subject to supervision.

(b) with such liberty for creditors, contributories, or others to apply to the Court; and generally

25 & 26 Vic., c. 89, s. 147.

(c) upon such terms and subject to such conditions as the Court thinks just.

37 Vic. No. 19, s. 198.

**147.** A petition praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court (and which winding-up is hereinafter referred to as a winding-up

Petition for winding-up, subject to supervision.

25 & 26 Vic., c. 89, s. 148.

under

37 Vic. No. 19, s. 199.

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under the supervision of the Court), shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding-up the company by the Court.

Court may have regard to wishes of creditors.  
25 & 26 Vic., c. 89, s. 149.  
37 Vic. No. 19, s. 200.

**148.** (1) The Court may—

- (a) in determining whether a company is to be wound-up altogether by the Court or under the supervision of the Court;
- (b) in the appointment of liquidators; and
- (c) in all other matters relating to the winding-up under supervision,

have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence.

(2) The Court may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

(3) In the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company.

Court may appoint official liquidators in winding-up, subject to supervision.  
25 & 26 Vic., c. 89, s. 150.  
37 Vic. No. 19, s. 201.

**149.** (1) Where any order is made by the Court for a winding-up under the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidators.

(2) Any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if they had been appointed by the company.

(3) The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Effect of order of Court for winding-up, subject to supervision.  
25 & 26 Vic., c. 89, s. 151.  
37 Vic. No. 19, s. 202.

**150.** (1) Where an order is made for a winding-up under the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court in the same manner as if the company were being wound-up altogether voluntarily.

(2) Save as aforesaid, any order made by the Court for a winding-up under the supervision of the Court shall, for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding-up the company by the Court, and shall confer full authority on the Court—

- (a) to make calls; or
- (b) to enforce calls made by the liquidators; and
- (c) to exercise all other powers which it might have exercised if an order had been made for winding-up the company altogether by the Court.

(3)

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(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidators" shall be deemed to include the liquidators conducting the winding-up subject to the supervision of the Court.

**151.** Where an order has been made for the winding-up of a company under the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound-up compulsorily, the Court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

Voluntary liquidators may in certain cases be appointed official liquidators.  
25 & 26 Vic. c. 89, s. 152.  
37 Vic. No. 19, s. 203.

**152.** Where a company is being wound-up by the Court or under the supervision of the Court, all dispositions of the property, effects, and choses in action of such company, and every transfer of shares or alteration in the status of the members of such company made between the commencement of the winding-up and the order for winding-up shall, unless the Court otherwise orders, be void.

SUPPLEMENTAL PROVISIONS.  
After commencement of winding-up, dispositions of property of company void.  
25 & 26 Vic., c. 89, s. 153.  
37 Vic. No. 19, s. 204.

**153.** Where a company is being wound-up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Books of company to be *prima facie* evidence.  
25 & 26 Vic., c. 89, s. 154.  
37 Vic. No. 19, s. 205.

**154.** (1) Where a company has been wound-up under this part of this Act, and is about to be dissolved, the books, accounts, and documents of such company and of the liquidators may be disposed of in the following way (that is to say)—

Disposal of books and documents.  
25 & 26 Vic., c. 89, s. 155.  
37 Vic. No. 19, s. 206.

(a) where such company has been wound-up by or under the supervision of the Court in such way as the Court directs; and

(b) where such company has been wound-up voluntarily in such way as the company by an extraordinary resolution directs.

(2) After the lapse of five years from the date of such dissolution no responsibility shall rest on the company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party claiming to be interested therein.

**155.** (1) Where an order has been made for a winding-up by or under the supervision of the Court, the Court may make such order for the inspection by creditors and contributories of books and papers as the Court thinks just.

Inspection of books.  
25 & 26 Vic. c. 89, s. 156.  
37 Vic. No. 19, s. 207.

(2) Any books and papers in the possession of the company being wound-up may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.



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Power of assignee of chose in action to sue.  
25 & 26 Vic., c. 89, s. 157.  
37 Vic. No. 19, s. 208.

Debts of all descriptions to be proved.  
25 & 26 Vic., c. 89, s. 158.  
37 Vic. No. 19, s. 209.

General scheme of liquidation may be sanctioned.  
25 & 26 Vic., c. 89, s. 159.  
37 Vic. No. 19, s. 210.

Arrangements with creditors.  
25 & 26 Vic., c. 89, ss. 136, 159.  
37 Vic. No. 19, ss. 187, 210.  
25 & 26 Vic., c. 89, ss. 137.  
37 Vic. No. 19, s. 188.

Creditors meetings with a view to Court's sanction of compromises.  
33 & 34 Vic., c. 104, s. 2.  
55 Vic. No. 9, ss. 2, 4, 6.

**156.** Any person to whom any thing in action belonging to a company is assigned in pursuance of this part of this Act may bring or defend any action or suit relating to such thing in action in his own name.

**157.** In the event of a company being wound-up under this part of this Act all debts payable on a contingency, and all claims against such company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as it is possible of the value of all such debts or claims as may be subject to any contingency, or sound only in damages, or for some other reason do not bear a certain value.

**158.** The liquidators may—

- (a) with the sanction of the Court, where a company is being wound-up by or under the supervision of the Court; and
- (b) with the sanction of an extraordinary resolution of the company where a company is being wound-up altogether voluntarily;

pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against such company, or whereby such company may be rendered liable.

**159.** (1) Any arrangement entered into between a company about to be or in the course of being wound-up voluntarily and its creditors shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory of a company that has entered into any such arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

**160.** (1) Where any compromise or arrangement is proposed between a company in the course of being wound-up, either voluntarily, or by, or under the supervision of the Court, and the creditors of the company, or any class of such creditors, the Court may, in addition to any other of its powers, on the application in a summary way of any creditor, or the liquidator, order that a meeting of such creditors, or class of creditors, shall be summoned in such manner as the Court directs.

(2) If a majority in number, representing three-fourths in value of such creditors, or class of creditors, present either in person, or by proxy or attorney, at such meeting, agree to any arrangement

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arrangement or compromise, such arrangement or compromise shall, if sanctioned by the order of the Court, be binding on all such creditors, or class of creditors, and also on the liquidator and contributories of the company.

(3) The Court, on the application of the company, or of any creditor or person interested in the company, before sanctioning any arrangement or compromise under this section, may order such meetings to be summoned and inquiries made as it thinks fit, and may alter or vary such arrangement or compromise, and impose such conditions in the carrying out thereof, as it thinks just.

(4) The word "company," in this section, shall include any society registered under the Friendly Societies Act of 1873, or any Act amending or consolidating the same, or any company, association, or society entitled or liable to be wound-up under this part of this Act.

**161.** (1) The liquidators may—

- (a) with the sanction of the Court in the case of a winding-up by or under the supervision of the Court; and
- (b) with the sanction of an extraordinary resolution of the company where a company is being wound-up altogether voluntarily;

compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages subsisting or supposed to subsist between such company and any contributory or alleged contributory or other debtor or person apprehending liability to such company, and all questions in any way relating to or affecting the assets of such company or the winding-up thereof, upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon.

(2) The liquidators may take any security for the discharge of such debts or liabilities, and give complete discharges in respect of all or any such calls, debts, or liabilities.

**162.** Where in the course of a winding-up it appears that any past or present director, manager, liquidator, or any officer of the company being wound-up has misapplied or retained in his own hands or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, creditor, or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him—

- (i) to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just; or

(ii)

Arrangements with  
debtors.  
25 & 26 Vic., c. 89,  
s. 160.  
37 Vic., No. 19, s. 211.

Power of Court to  
assess damages  
against delinquent  
officers.  
25 & 26 Vic., c. 89,  
s. 165.  
37 Vic. No. 19, s. 216.

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- (ii) to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

Penalty on falsification of books.  
25 & 26 Vic., c. 89, s. 166.  
31 Vic. No. 19, s. 217.

**163.** If any director, officer, or contributory of such company destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to such company with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanour, and upon being convicted shall be liable to imprisonment for any term not exceeding two years with or without hard labour.

Prosecution of delinquent directors or officers in winding-up.  
25 & 26 Vic., c. 89, ss. 167, 168.  
37 Vic. No. 19, ss. 218, 219.

**164.** If it appears in the course of a winding-up that any past or present director, manager, officer, or member of the company being wound-up has been guilty of any offence in relation to the company for which he is criminally responsible—

- (a) the Court, where such company is being wound-up by the Court or under the supervision of the Court, may, on the application of any person interested in such winding-up, or of its own motion, direct the liquidator to institute a prosecution for such offence, and may order the costs and expenses to be paid out of the assets of the Company; and
- (b) the liquidator, where such company is being wound-up altogether voluntarily, with the previous sanction of the Court may prosecute such offender, and all expenses properly incurred by him in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Perjury.  
25 & 26 Vic., c. 89, s. 169.  
37 Vic. No. 19, s. 220.

**165.** (1) If any person upon any examination upon oath or affirmation authorised under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding-up under this part of this Act of any company, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

(2) This section shall not apply to Part II of this Act nor to so much of Part III as affects no-liability companies.

#### DIVISION 5.—*Registration office.*

Constitution of registration office.  
25 & 26 Vic., c. 89, s. 174.  
37 Vic. No. 19, s. 222.

**166.** The registration of companies shall be conducted as follows, that is to say:—

- (a) The Governor may from time to time appoint such registrars, assistant registrars, clerks, and servants as he may think necessary for the registration of companies.
- (b) The Governor may make regulations with respect to the duties to be performed by any such registrars, assistant registrars, clerks, and servants as aforesaid, and may determine the place or places at which offices for the registration of companies are to be established.
- (c)

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- (c) Every person may inspect the documents kept by the Registrar, and may require a copy or extract of any document or part of a document to be certified by the Registrar, and there shall be paid for such inspection and for such certified copy or extract the respective fees specified in the table marked B in the Second Schedule hereto, and such certified copy or extract shall be prima facie evidence of the matters therein contained in all legal proceedings whatever.
- (d) Nothing in this section shall be taken to affect the provisions of the Act fifty-ninth Victoria number twenty-five, or any Act consolidating or amending the same.

*DIVISION 6.—Companies authorised to register.*

**167.** (1) The following regulations shall be observed with respect to the registration of companies under this division of this part of this Act (that is to say) :—

Registration of  
existing companies.  
25 & 26 Vic., c. 89,  
s. 179.  
37 Vic. No. 19, s. 223.

- (a) No company having the liability of its members limited by Act of Parliament, Royal Charter, or Letters Patent, and not being a joint stock company as hereinafter defined, shall so register.
- (b) No company having the liability of its members limited by Act of Parliament, Royal Charter, or Letters Patent shall so register as an unlimited company, or as a company limited by guarantee.
- (c) No company that is not a joint stock company as hereinafter defined shall so register as a company limited by shares.
- (d) No company shall so register unless an assent to its so registering be given by a majority of such of its members as may be present personally, or by proxy in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose.
- (e) Where a company not having the liability of its members limited by Act of Parliament, Royal Charter, or Letters Patent, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting.
- (f) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes, in the event of the same being wound-up during the time that he is a member, or within one year afterwards,

to

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to contribute to the assets of the company, such amount as may be required not exceeding a specified amount—

- (i) for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding-up the company; and
- (ii) for the adjustment of the rights of the contributories amongst themselves;

(2) In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

Companies capable  
of being registered.  
25 & 26 Vic., c. 89,  
s. 180.  
37 Vic. No. 19, s. 224.

**168.** (1) Subject as aforesaid, every company existing at the passing of this Act consisting of seven or more members, and any company hereafter formed in pursuance of any Act of Parliament other than this Act, Royal Charter, or Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this part of this Act as an unlimited company, or a company limited by shares, or a company limited by guarantee.

(2) No such registration shall be invalid by reason that it has taken place with a view to the company being wound-up.

Definition of "Joint  
Stock Company."  
25 & 26 Vic., c. 89,  
s. 181.  
37 Vic. No. 19, s. 225.

**169.** (1) For the purposes of this division of this part of this Act a joint stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount—

- (a) divided into shares also of fixed amount; or
- (b) held and transferable as stock; or
- (c) divided and held partly in one way and partly in the other; and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons.

(2) Such company, when registered with limited liability under this part of this Act, shall be deemed to be a company limited by shares.

Proviso as to banking  
companies.  
25 & 26 Vic., c. 89,  
s. 182.  
37 Vic. No. 19, s. 226.

**170.** (1) No banking company claiming to issue notes shall be entitled to limited liability in respect of such issue, but such company shall continue subject to unlimited liability in respect thereof.

(2) If necessary the assets of such company shall be marshalled for the benefit of the general creditors.

(3) The members of such company shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company.

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**171.** Previously to the registration, in pursuance of this division of this part of this Act, of any joint stock company, there shall be delivered to the Registrar the following documents (that is to say)—

- (a) a list showing the names, addresses, and occupations of all persons who, on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number;
  - (b) a copy of any Act of Parliament, Royal Charter, Letters Patent, deed of settlement, contract of copartnership, or other instrument constituting or regulating the company;
- and also, if any such joint stock company is intended to be registered as a limited company—

- (c) a statement specifying the following particulars (that is to say)—
    - (i) the nominal capital of the company and the number of shares into which it is divided;
    - (ii) the number of shares taken and the amount paid on each share;
    - (iii) the name of the company, with the addition of the word “limited” as the last word thereof;
- with the addition, in the case of a company intended to be registered as a company limited by guarantee, of—
- (iv) the resolution declaring the amount of the guarantee.

**172.** Previously to the registration, in pursuance of this division of this part of this Act, of any company not being a joint stock company, there shall be delivered to the Registrar—

- (a) a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; also
  - (b) a copy of any Act of Parliament, Royal Charter, Letters Patent, deed of settlement, contract of copartnership, or other instrument constituting or regulating the company;
- with the addition, in the case of a company intended to be registered as a company limited by guarantee, of
- (c) the resolution declaring the amount of guarantee.

**173.** Where a joint stock company authorised to register under this part of this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar—

- (a) a statement of the amount of stock belonging to the company; and
- (b) the names of the persons who were holders of such stock on some day to be named in the statement not more than six clear days before the day of registration.

**174.**

Requisites to registration by company.

25 & 26 Vic., c. 89, s. 183.

37 Vic. No. 19, s. 227.

Requisites to registration by company not being a joint stock company.

25 & 26 Vic., c. 89, ss. 184.

37 Vic. No. 19, s. 228.

Power for company to register stock instead of shares.

25 & 26 Vic., c. 89, s. 185.

37 Vic. No. 19, s. 229.

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Verification of  
particulars.

25 & 26 Vic., c. 89,  
s. 186.

37 Vic. No. 19, s. 230.

Evidence of existence  
as a company may  
be required.

25 & 26 Vic., c. 89, s. 187.  
37 Vic. No. 19, s. 231.

Notice to customers  
on registration of  
limited banking  
company.

25 & 26 Vic., c. 89,  
s. 188.

37 Vic. No. 19, s. 232.

Exemption from  
fees.

25 & 26 Vic., c. 89,  
s. 189.

37 Vic. No. 19, s. 233.

Change of name.

25 & 26 Vic., c. 89,  
s. 190.

37 Vic. No. 19, s. 234.

Certificate of  
registration.

25 & 26 Vic., c. 89,  
s. 191.

37 Vic. No. 19, s. 235.

**174.** The lists of members and directors, and any other particulars relating to the company hereby required to be delivered to the Registrar shall be verified by a statutory declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company.

**175.** The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a joint stock company as hereinbefore defined.

**176.** (1) Every banking company existing at the passing of this Act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company.

(2) Such notice shall be given either by delivering the same to such person or firm, or leaving the same, or putting the same as a prepaid letter into the post addressed to him or them at such address as shall have been last communicated to, or otherwise become known as his or their address by, the company.

(3) In case the company omits to give any such notice as is hereinbefore required to be given, then, as between the company and the persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

**177.** No fees shall be charged in respect of the registration of any company, in pursuance of this division of this part of this Act, in cases—

- (a) where such company is not registered as a limited company; or
- (b) where, previously to its being registered as a limited company, the liability of the shareholders was limited by some other Act of Parliament, or by Royal Charter, or Letters Patent.

**178.** A company authorised by this division of this part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited."

**179.** (1) Upon compliance with the requisitions in this division of this part of this Act contained with respect to registration, and on payment of such fees (if any) as are payable under the table marked B in the Second Schedule hereto, the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this part of this Act, and in the case of a limited company that it is limited.

(2)

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(2) Thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands and to exercise all the functions of an incorporated company.

**180.** (1) A certificate of incorporation given at any time to any company registered in pursuance of this division of this part of this Act shall be conclusive evidence—

Certificate to be evidence of compliance with Act. 25 & 26 Vic., c. 89, s. 192.

(a) that all the requisitions herein contained in respect of registration under this part of this Act have been complied with; and

37 Vic. No. 19, s. 236.

(b) that the company is authorised to be registered under this part of this Act as a limited or unlimited company, as the case may be.

(2) The date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this part of this Act.

**181.** All such real and personal estate as may belong to or be vested in a company at the date of its registration under this division of this part of this Act shall on registration pass to and vest in the company as incorporated under this division of this part of this Act.

Vesting of property. 25 & 26 Vic., c. 89, s. 195. 37 Vic. No. 19, s. 237.

**182.** The registration in pursuance of this division of this part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce any debt or obligation incurred or any contract entered into by, to, with, or on behalf of such company previously to such registration.

Previous obligations not affected. 25 & 26 Vic., c. 89, s. 194. 37 Vic. No. 19, s. 238.

**183.** (1) All such actions, suits, and other legal proceedings as may at the time of the registration of any company registered in pursuance of this division of this part of this Act have been commenced by or against such company, or the public officer, or any member thereof, may be continued in the same manner as if such registration had not taken place :

Continuation of existing actions and suits. 25 & 26 Vic., c. 89, s. 195. 37 Vic. No. 19, s. 239.

(2) Execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding-up the company.

**184.** (1) When a company is registered under this division of this part of this Act, all provisions contained in any Act of Parliament, deed of settlement, contract of copartnership, Royal Charter, Letters Patent, or other instrument constituting or regulating such company, including in the case of a company registered as a company limited by guarantee the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association.

Effect of registration. 25 & 26 Vic., c. 89, s. 196. 37 Vic. No. 19, s. 240.

(2)



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(2) All the provisions of this part of this Act shall apply to such company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this part of this Act subject to the provisions following (that is to say) :—

- (a) Table A in the Second Schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this part of this Act in pursuance of this division thereof.
- (b) The provisions of this part of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered.
- (c) No company shall have power to alter any provision contained in any Act relating to the company.
- (d) No company shall have power without the sanction of the Governor to alter any provision contained in any Royal Charter or Letters Patent relating to the company.
- (e) Nothing herein contained shall authorise any company to alter any such provisions contained in any deed of settlement, contract of copartnership, Royal Charter, Letters Patent, or other instrument constituting or regulating the company, as would if such company had originally been formed under this part of this Act have been contained in the memorandum of association, and are not authorised to be altered by this part of this Act.

(3) Nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this division of this part of this Act, by virtue of any Act of Parliament, deed of settlement, contract of copartnership, Royal Charter, Letters Patent, or other instrument constituting or regulating the company.

**DIVISION 7.—*Actions by unregistered companies.***

Provision in case of  
unregistered  
company.

25 and 26 Vic., c. 89,  
s. 203.

37 Vic. No. 19, s.  
247.

**185.** (1) If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding-up such company, or by any subsequent order, direct that the whole or any part of such real and personal estate, as may belong to or be vested in—

(a) the company; or  
(b) any person in trust for or on behalf of the company,  
is to vest in the official liquidator by his official name, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly.

(2) The official liquidator may in his official name, or in such name, and after giving such indemnity, as the Court directs, bring  
or

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or defend any action, suit, or other proceeding relating to any property vested in him, or any action, suit, or other proceeding necessary to be brought or defended for the purpose of effectually winding-up the company and recovering the property thereof.

PART II.

NO-LIABILITY MINING COMPANIES.

**186.** (1) In the construction and for the purposes of this part of this Act and unless the context necessarily requires a different or modified meaning the expression—

Interpretation of various expressions.  
60 Vic. No. 15, s. 4.

“Manager” shall include acting-manager.

“Secretary” shall include acting-secretary.

**187.** (1) In the construction and for the purposes of this part of this Act the expression—

Interpretation of expression “contributing capital.”  
*Ibid.* s. 5.

“Contributing capital” shall mean the whole of the nominal capital of the company as stated in the memorandum for registration, or increased nominal capital, as the case may be, excepting and deducting—

- (a) such part thereof as is represented by all shares (if any) which for some consideration other than cash are issuable by the company as fully paid up;
- (b) such part thereof as is represented by the paid-up portion of all shares (if any) which for some consideration other than cash are issuable by the company as partly paid up.

(2) For the purposes of this section no shares shall be issuable as fully paid up or partly paid up for a consideration other than cash unless such consideration shall be fully disclosed by some contract filed with the Registrar at or before the issue of such shares.

**188.** Companies may be incorporated by registration under this part of this Act for the purposes of mining in New South Wales or elsewhere, and of treating, selling, and otherwise disposing of ores, metals, minerals, and all products of mining, and with all powers necessary for or incidental to carrying on the business of mining in New South Wales or elsewhere on a system to be called “The No-Liability System,” and every company so incorporated shall have as the last two words of its title the words “No Liability.”

No-liability system.  
*Ibid.* s. 6.

**189.** (1) In order to obtain such registration it shall be necessary that ten per centum of the contributing capital shall be paid up in cash, and there must be lodged in the office of the Registrar a memorandum signed by not less than seven persons as intending shareholders of such company.

Mode of obtaining registration.  
*Ibid.* s. 7.

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Fifth Schedule.

(2) Such memorandum shall be as nearly as possible in the form contained in the Fifth Schedule to this Act, and shall be verified by a statutory declaration of some person as the manager or provisional manager of such company in the form or to the effect set forth in the said Fifth Schedule, and by such other evidence (if any) as the Registrar may require.

(3) Within twenty-one days after the day of such lodgment a copy of the said memorandum and declaration shall be published in the Gazette and in at least one newspaper circulating in the town or district in which the company's registered office is to be situated.

(4) Within twenty-one days after such publication copies of such Gazette and newspapers shall be forwarded to the office of the Registrar, to be there retained and filed with the said memorandum.

Registration effected  
by Registrar.

60 Vic. No. 15, s. 8.

**190.** The Registrar shall keep a register book, to be entitled the "No-liability Mining Companies Register," and on receipt by him of the said newspapers and Gazette, and copy of rules (if any) hereinafter mentioned, he shall enter the date of such receipt, and shall write and sign at the foot of the memorandum for registration a certificate to the effect that the company has been duly registered, with the date of such registration, and thereupon the said no-liability mining company shall be deemed to be registered under this part of this Act.

Proof of registration.

*Ibid.* s. 9.

Fourth Schedule.

**191.** (1) A certificate in the form or to the effect in the Fourth Schedule to this Act purporting to be under the hand of the Registrar (who is hereby required to give such certificate to any person applying for the same on payment of the requisite fee), shall be conclusive evidence for all purposes that the company named in such certificate has been duly registered under the provisions of this part of this Act, and of the date of its registration.

(2) Such certificate shall refer to the Gazette and newspapers filed, in which the memorandum for registration has been advertised, and shall state their respective dates, and the date of registration of the company.

Effect of registration.

*Ibid.* s. 10.

**192.** Upon registration, the persons who have signed the memorandum for registration, together with such other persons as thereafter from time to time become holders of shares in the company, shall be a body corporate by the name contained in the memorandum for registration, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands of any tenure for the purposes of the company's business, and with such other subsidiary powers not inconsistent with this Act as may be provided by its rules as originally framed, and shall be capable of suing and being sued in its corporate name.

Definition of  
"members."*Ibid.* s. 11.

**193.** The subscribers of the memorandum for registration shall be deemed to be members of the company whose memorandum for registration

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registration they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned, and every other person who has agreed to become a member of any company registered under this part of this Act and whose name is entered on the register of members shall be deemed to be a member of the company.

**194.** The acceptance of a share in any company registered under this part of this Act, whether by subscription to the memorandum for registration or by original allotment or by transfer, or otherwise, shall not be deemed a contract on the part of the person accepting the same to pay any calls in respect thereof, or to pay any contribution to the debts and liabilities of the company, and such person shall not be liable for any such calls or contributions, but he shall not be entitled to receive a dividend upon any share upon which a call is due and unpaid.

Members not liable to calls or contributions.

60 Vic. No. 15, s. 13.

**195.** Every prospectus of a no-liability company, and every notice inviting persons to subscribe for shares in any no-liability company, shall specify the names of the parties to and date of any contract relating to the formation of the company, or to its capital property or business, or to the position pecuniary or otherwise in regard to the company or its promoters or vendors of the directors, whether provisional or otherwise, or other officers or agents of the company entered into by the company or the promoters, directors, or trustees thereof before the issue of such prospectus or notice, whether subject to adoption by the company or otherwise. And any prospectus not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company, knowingly issuing the same as regards any person taking shares in the company on the faith of such prospectus unless he has had notice of such contract.

Prospectus to specify dates of and names of parties to contracts.

*Ibid.* s. 48.

**196.** Every company registered under this part of this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars :—

Company to keep register of members.

*Ibid.* s. 11.

- (1) The names and addresses of the members of the company, with a statement of the shares held by each, and the distinguishing numbers of such shares, together with the particulars of the amount paid or agreed to be considered as paid on the shares of each member.
- (2) The date at which the name of any person was entered in the register as a member.
- (3) The date at which any person ceased to be a member.

and any company acting in contravention of this section, and every director, manager, or secretary of the company knowingly and wilfully authorising or permitting such contravention, shall incur a penalty not exceeding one pound for every day during which its default in complying with the provisions of this section continues.

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Companies formed previously to repealed Act may be registered as no-liability companies.

60 Vic. No. 15, s. 16.

**197.** Any registered or unregistered company formed for mining purposes previously to the passing of the Act forty-fourth Victoria number twenty-three may, with the consent of a majority in number of the members of such company, present in meeting, personally or by proxy, if the members constituting such majority hold at least one-half of the issued capital of such company, and with the consent in writing of all the creditors and persons entitled to enforce any claim against the company (if any) be registered and incorporated under this part of this Act; but in any such case the memorandum for registration shall distinctly state the consent of such majority, and the consent in writing of the creditors and persons entitled to enforce any such claim as aforesaid shall be lodged with the Registrar together with the memorandum for registration.

On the registration as a no-liability company liability of members to cease.

*Ibid.* s. 17.

**198.** On the registration, under this part of this Act, of any such company as mentioned in the last preceding section, all liabilities of the members for calls shall from thenceforth cease, and in the event of the winding-up of such company the members shall not be bound to contribute to the debts or liabilities of the company:

Provided always that notwithstanding such registration, any person having any claim or demand in respect of any contract, act, matter, or thing which has been made or happened before such registration, shall have the same remedy as if such registration had not taken place, unless such person has consented to the registration of the company as aforesaid.

The director, manager, or agent of a no-liability company to order goods, &c., on paper with words "no-liability."

*Ibid.* s. 18.

**199.** (1) Any director, manager, secretary, or agent of a company registered under this part of this Act engaging workmen, or ordering goods, plant, or other articles or necessaries for the purposes of the company shall do so on paper bearing the company's name, including the words "no liability."

(2) If workmen be engaged, or goods, plant, or other articles or necessaries be ordered otherwise than as aforesaid, the person engaging such workmen, or ordering such goods, plant, articles, or necessaries shall be personally liable in the event of the company failing to pay.

Calls to be due on the second Wednesday in any month.

*Ibid.* s. 19.

**200.** (1) The calls upon shares in every company registered under this part of this Act shall be made in such time and manner that they shall become due on the second Wednesday in a month, and on that day only: Provided that if such Wednesday is a public holiday, they shall become due on the next succeeding week-day which is not a public holiday.

(2) A notice shall be printed on the face of the company's share certificates stating that the day above mentioned is the day on which calls fall due.

(3) When a call has been made, not less than seven days' notice of the day when it will fall due and of the place for payment thereof

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thereof shall be published in two daily newspapers published in Sydney, and if the company's registered office is situated outside Sydney, then also in a newspaper circulating in the town or district in which the company's registered office is situated.

(4) In addition to the publication of such notices seven days' notice of any call shall be served by the company on each member personally or by sending the same through the post (postage prepaid) addressed to such member at his address as entered in the register of members, and such notice shall specify the amount of the call and the time and place of payment.

(5) Such notice shall be deemed to have been duly served if posted in New South Wales not less than ten days prior to the due date of such call.

**201.** When a call has been made no subsequent call shall be made until after the expiration of fourteen days from the day when the first-mentioned call has become due.

No call to be made until fourteen days after previous call becomes due.  
60 Vic. No. 15, s. 20.  
Forfeiture of shares.  
*Ibid.*, s. 21.

**202.** (1) Any share upon which a call has remained unpaid for fourteen days after the due date of such call shall thereupon be absolutely forfeited without any resolution of directors or other proceeding.

(2) Such share when forfeited shall be sold by public auction, notice whereof shall be advertised in two daily newspapers published in Sydney, and if the company's registered office is situated outside Sydney, then also in one issue of a newspaper circulating in the town or district in which the company's registered office is situated, and the last of such advertisements being not less than seven days before the day appointed for the sale.

(3) Every such advertisement shall state the number in the company's share register of the share so forfeited.

(4) The proceeds shall be applied in payment of all overdue calls unpaid thereon, and of any expenses necessarily incurred in respect of the forfeiture, and the balance (if any) shall be paid to such person on his delivering to the company the certificate representing the forfeited share.

(5) A new certificate may be issued by the directors for such forfeited share in place of the certificate delivered to the company or held by the person whose share has been so forfeited as aforesaid.

(6) If the amount bid for such forfeited share is not sufficient to satisfy all overdue calls unpaid thereon with such expenses as aforesaid, the directors of the company may refuse to sell such share, and in such case they may sell such share in such manner as they think fit.

(7) The directors may at any time before any such forfeited share has been sold annul the forfeiture thereof upon payment of the amount of all overdue calls thereon, together with any such expenses as aforesaid.

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(8) Under this section a sale may be made of forfeited shares of various shareholders together or in various parcels.

(9) In advertising any notice of intended sale under this section of any shares with consecutive numbers it shall be sufficient to state the first and last of the consecutive numbers as follows [numbered from ( ) to ( ) both inclusive].

Provision as to  
balance-sheet.  
60 Vic. No. 15, s. 26.  
Second Schedule,  
Table A.

**203.** (1) Every company registered under this part of this Act shall, at least once in every year, present to the members, at a general meeting of the company, a balance-sheet in the form annexed to Table A in the Second Schedule to this Act, or as near thereto as circumstances will admit, and shall, within one month after the general meeting of the company at which any such balance-sheet has been presented, file with the Registrar a copy thereof.

(2) Any company acting in contravention of this section, and every director, manager, or secretary of the company knowingly and wilfully authorising or permitting such contravention, shall incur a penalty not exceeding one pound for every day during which its default in complying with the provisions of this section continues.

Rules.  
*Ibid.* s. 28.

**204.** (1) The memorandum for registration may, when lodged, be accompanied by rules signed by the persons who sign the memorandum for registration in such form and with such provisions not inconsistent with this Act as such persons deem expedient.

(2) The rules shall be expressed in separate paragraphs numbered arithmetically, and the subscribers to the memorandum for registration may adopt all or any of the provisions contained in the Seventh Schedule to this Act.

Effect of rules.  
*Ibid.* s. 29.

**205.** Such rules when registered shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such rules contained a covenant on the part of each member for himself, his heirs, executors, and administrators to conform to and be bound by all the provisions contained in such rules subject to the provisions of this Act.

Application of  
Seventh  
Schedule.  
*Ibid.* s. 30.

**206.** If the memorandum for registration is not accompanied by rules as aforesaid, or in so far as such rules do not exclude or modify the provisions contained in the Seventh Schedule to this Act, the lastmentioned provisions shall, so far as the same are applicable, be deemed to be the rules of the company to the same extent and in the same manner as if they had been expressed in rules duly signed and registered as aforesaid.

Power to alter rules  
by special resolution.  
*Ibid.* s. 31.

**207.** Subject to the provisions of this Act, any company registered under this part of this Act may from time to time by special resolution alter all or any of the rules of the company, or make new rules to the exclusion of, or in addition to, all or any of the rules of the company, and any rules so made by special resolution shall be deemed to

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to be rules of the company of the same validity as if they had been originally registered with the memorandum for registration, and shall be subject in like manner to be altered by any subsequent special resolution.

**208.** Subject to the provisions in this Act contained, any company registered under this part of this Act may, if authorised by its rules as originally framed, or as altered by special resolution, increase its capital by the issue of new shares of, and to such amount, and upon such terms as it thinks fit.

*Increase of capital.*  
60 Vic. No. 15, s. 32.

**209.** Notice of the resolution for the increase of capital shall immediately, or so soon as practicable after the passing thereof, be published in the Gazette, and in one or more newspapers circulating in the town or district in which the company's registered office is situated; such notice shall be in the form or to the effect of Form A in the Sixth Schedule to this Act.

*Notice of increase of capital.*  
*Ibid.* s. 33.  
Sixth Schedule, Form A.

**210.** (1) Before the allotment or issue of any new shares or an increase of capital of any company registered under this part of this Act, ten per centum of the contributing capital (if any) represented by such new shares shall be paid up to the company in cash, and a statutory declaration in Form B of the Sixth Schedule to this Act, having annexed to it a copy of the advertised notice of resolution to increase, shall be made by the manager or secretary of the company, and filed with the Registrar.

*Procedure on increase of capital.*  
*Ibid.* s. 34.  
Sixth Schedule, Form B.

(2) Upon the filing of such declaration, together with such other evidence (if any) as the Registrar may require to prove that ten per centum of the contributing capital (if any) represented by such new shares has been paid up to the company in cash, the Registrar shall issue a certificate in Form C of the Sixth Schedule to this Act, and, upon the signature of such certificate but not before, such new shares may be allotted and issued; and such certificate or any duplicate or duplicates thereof from time to time issued by the Registrar shall be conclusive evidence that such increase was legally and properly made, and of the number, amount, and nature of the new shares.

Sixth Schedule, Form C.

**211.** Any company registered under this part of this Act may, if authorised by its rules as originally framed, divide the shares in the capital for the time being into several classes, and attach thereto respectively any preferential, deferred, qualified, or special rights, privileges, or conditions.

*Power to divide shares into different classes.*  
*Ibid.* s. 36.

**212.** Any company registered under this part of this Act shall, if authorised by its rules as originally framed, or as altered by special resolution, have power to borrow or raise money, and to secure the payment thereof with interest and other charges, and also the payment of any past debt or obligation of the company, with interest and other charges, by mortgage or charge of or upon the whole of the real and personal property, undertaking, and rights of the company, or any part thereof,

*Power to borrow and mortgage.*  
*Ibid.* s. 37.



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thereof, in such manner as to the company seems fit: Provided that this section shall be read as subject to the provisions of section two hundred and sixty-three, and to the other provisions in this Act contained.

Power to sell or  
let, &c.

60 Vic. No. 15, s. 38.

**213.** (1) Any company registered under this part of this Act shall, if authorised by its rules as originally framed, or as altered by special resolution, have power to sell and dispose of, or let and demise, the whole of the real and personal property, undertaking, and rights of the company, or any part thereof, for such consideration, upon such terms and conditions, and in such manner in every respect as to the company seems fit, and such company may convey, transfer, assign, or otherwise assure the property sold to the purchaser thereof, or as such purchaser directs.

(2) Nothing in this section contained shall be deemed to limit the power of any such company to make sales of metals, quartz, ores, or minerals, or other products or things in the course of such company's business.

(3) Every such company shall, unless the same is expressly negatived by its rules for the time being, have an inherent right to make sales from time to time of such plant or stores as may not be required in connection with the conduct of its business.

Voluntary  
winding-up.  
*Ibid.* s. 68.

**214.** (1) Whenever a resolution has been passed by two-thirds of the members present in person, or by proxy, at a meeting of any company registered under this part of this Act, all the liabilities of which have been discharged, that the company be voluntarily wound-up, the company may be wound-up without resort to the Court, and the company shall in general meeting appoint a liquidator for the purpose of winding-up the affairs and distributing the property of the company.

(2) The company shall also in general meeting either on one occasion or from time to time determine the course to be pursued by the liquidator for such purpose as aforesaid, and the mode of disposing of the company's property, and the mode of disposal of the books of the company, and may by resolution determine the remuneration to be allowed to the liquidator for his services in connection with the winding-up.

Notice of resolution  
to wind-up or  
appointing liquidator  
to be filed.  
*Ibid.* s. 69.

**215.** Notice of every such resolution as above for the winding-up voluntarily of any company registered under this part of this Act, and of every appointment of a liquidator, shall be filed with the Registrar within fourteen days from the passing thereof.

Commencement of  
voluntary  
winding-up.  
*Ibid.* s. 70.

**216.** A winding-up under section two hundred and fourteen of this Act shall be deemed to commence at the time of the passing of the resolution authorising such winding-up.

Consequences of  
winding-up, and appoint-  
ment of liquidator.  
*Ibid.* s. 71.

**217.** Whenever a company registered under this part of this Act is wound-up voluntarily the company shall, from the date of the commencement

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commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, and upon the appointment of a liquidator all the powers of the directors shall cease, except in so far as the company in general meeting, or the liquidator, sanction the continuance of such powers.

218. Where a company registered under this part of this Act is being wound-up voluntarily, the liquidator may exercise all the powers which, under this Act, are exercisable by an official liquidator with the sanction of the Court. Powers of liquidator. 60 Vic. No. 15, s. 72.

219. Where a company registered under this part of this Act is being wound-up voluntarily, the liquidator of the company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise all or any of the powers (except those with regard to calls and contributories) which the Court might exercise if the company were being wound-up under part I of this Act as hereinafter provided; and the Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just. Power for liquidator in voluntary winding-up to apply to Court. Ibid. s. 73.

220. (1) On the winding-up of any company registered under this part of this Act, whether voluntarily under this part or under part I of this Act, the surplus assets shall be distributed among all classes of shareholders alike irrespective of the amount called up on the respective shares or classes of shares. Distribution of surplus assets on winding-up. Ibid. s. 74.

(2) No member who is in arrear in payment of any call, but whose shares has not been actually forfeited, shall be entitled to share in such distribution until the amount owing in respect of such call has been fully paid and satisfied.

(3) Nothing herein contained shall prevent the distribution of such surplus in a different manner from that herein provided, where a different mode of distribution is expressly provided for in the rules as originally framed, or shall prevent the holder of any share wholly or in part actually paid in advance from sharing in the surplus in respect of every such payment.

221. A company registered under this part of this Act is to be deemed an unregistered company within the meaning of part I of this Act, for the purpose of being wound-up by the Court under this Act: Company deemed unregistered company for purposes of winding-up under part I.

Provided that none of the provisions of this Act relating to contributories shall apply to a company registered under this part of this Act in course of being wound-up under part I of this Act. Ibid. s. 78.

222. As soon as the affairs of the company are fully wound-up the liquidator shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed Liquidator on conclusion of winding-up to make up an account. Ibid. s. 79.

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disposed of, and thereupon he shall call a general meeting of the company for the purpose of having the account laid before the members, and hearing any explanation which may be given by the liquidator.

Liquidator to  
make return of  
meeting to  
Registrar.

60 Vic. No. 15, s. 80.

**223.** (1) The liquidator shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved.

(2) In the event of no quorum being present at any such meeting, it shall be a sufficient compliance with this section for the liquidator to make a return that such meeting has been duly convened.

Fees.

*Ibid.* s. 82.

Eighth Schedule.

**224.** There shall be paid to the Registrar, in respect of the several matters mentioned in the Eighth Schedule to this Act, the several fees therein specified, or such smaller fees as the Governor may direct.

## PART III.

## GENERAL PROVISIONS.

Power of companies  
to change name.

25 & 26 Vic. c. 89,  
s. 13.

37 Vic. No. 19, s. 12.

60 Vic. No. 15, s. 12.

**225.** (1) Any company registered under this Act may, with the sanction of a special resolution of the company and with the approval of the Governor, testified in writing under the hand of the Clerk of the Executive Council, change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall sign a certificate of registration or incorporation altered to meet the circumstances of the case, and all certificates of incorporation or registration thereafter issued shall be altered in like manner.

(2) No such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company; and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name.

Register *prima facie*  
evidence.

25 & 26 Vic., c. 89,  
s. 37.

37 Vic. No. 19, s. 35.

60 Vic. No. 15, s. 15.

**226.** The register of members of any company registered under this Act shall be *prima facie* evidence that the persons named therein as members of such company are such members, and shall be *prima facie* evidence of any other matters by this Act directed or authorised to be inserted therein.

Registered office.

25 & 26 Vic., c. 89  
s. 39.

37 Vic. No. 19, s. 71.

60 Vic. No. 15, s. 22.

**227.** (1) Every company registered under this Act shall have a registered office situated in New South Wales to which all communications and notices may be addressed.

(2) If any company registered under this Act carries on business without having such registered office, such company, and in the

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the case of a no-liability company, such company and the manager or secretary thereof respectively, shall be liable to a penalty not exceeding five pounds for every day during which business is so carried on.

**228.** (1) Service at the registered office of any company registered under this Act of any communication or notice, or of any writ, declaration, summons, plaint, order, or other document, proceeding, or process whatsoever in any action, suit, proceeding, or matter, either by leaving the same at such office or by sending the same through the post, postage prepaid (and in the case of a no-liability company also registered), addressed to the company at such office, shall be deemed to be service upon the company.

*Service of notices, &c., on company.*  
25 & 26 Vic., c. 89, s. 62.  
37 Vic. No. 19, s. 94.  
60 Vic. No. 15, s. 23.

(2) In the event of there being no registered office, the unregistered office, or, in the case of a no-liability company, the intended registered office mentioned in the memorandum for registration shall be deemed to be the registered office of the company for the purposes of this section.

*In re The British and Foreign Gas Co.*  
(11 Jur. N.S. 559.)

**229.** Any document to be served by post on any company registered under this Act shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof, and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put into the post-office, postage prepaid, or registered and postage prepaid, as the case may be.

*Rules as to service by post.*  
25 & 26 Vic., c. 89, s. 63.  
37 Vic. No. 19, s. 95.  
60 Vic. No. 15, s. 24.

**230.** (1) Any summons, notice, order, or proceeding requiring authentication by any company registered under this Act shall be sufficiently authenticated if signed by any director, manager, secretary, or other authorised officer of the company, and in the case of a no-liability company shall be also sufficiently authenticated if the name of any director, manager, secretary, or other authorised officer of the company is printed thereon.

*Authentication of notices, &c., of company.*  
25 & 26 Vic., c. 89, s. 61.  
37 Vic. No. 19, s. 96.  
60 Vic. No. 15, s. 25.

(2) No such summons, notice, order, or proceeding need be under the common seal of the company, and any such summons, notice, order, or proceeding may be in writing or in print, or partly in writing and partly in print.

(3) This section shall not apply to any documents which by this Act are to be filed or lodged with the Registrar, which shall be signed or authenticated as by this Act required, or in the absence of any such requirement shall be signed or authenticated by the manager or secretary of the company.

**231.** (1) Notice of the situation of the registered office of any company registered under this Act and of any change therein shall be given to the Registrar.

*Notice of change of registered office.*  
25 & 26 Vic., c. 89, s. 40.

(2) In the case of a no-liability company, if such change shall be from one town or district to another, such change shall be advertised once at least in the Gazette and in one newspaper circulating in the town or district from which the company's registered office has been or is being removed.

37 Vic. No. 19, s. 72.  
60 Vic. No. 15, s. 27.

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(3) Until such notice is given, the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Remedy for  
improper entry or  
omission of entry in  
register.

25 & 26 Vic., c. 89,  
s. 35.

37 Vic. No. 19, s. 33.

60 Vic. No. 15, s. 35.

**232.** (1) If the name of any person is without sufficient cause entered in or omitted from the register of members of any company registered under this Act, or if default is made or unnecessary delay takes place in entering on the register of members the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company or the company itself, may by motion in the Supreme Court, either in its common law or in its equitable jurisdiction, or by application to a Judge in chambers, or in such other manner as such Court may direct, apply for an order that the register may be rectified, and such Court or Judge may either refuse such application, with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company or any other party to such proceeding to pay all the costs of such a motion or application, and any damages the party aggrieved may have sustained.

(2) Such Court or Judge may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally such Court or Judge may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register or the adjustment of the rights of the parties thereto.

(3) Such Court or Judge may direct an issue to be tried in the said Court on the trial of which any question of law may be raised for decision.

Notice to Registrar  
of rectification of  
register.

25 & 26 Vic., c. 89,  
s. 36.

37 Vic. No. 19, s. 34.

(4) Whenever any order has been made rectifying the register of members in the case of a company by part I of this Act required to send a list of its members to the Registrar, such Court or Judge shall direct that due notice of such rectification be given to the Registrar.

Copies of memo-  
randum, &c., to be  
given to members.

25 & 26 Vic., c. 89,  
s. 19.

37 Vic. No. 19, s. 18.

60 Vic. No. 15, s. 39.

**233.** A copy of the memorandum of association, having annexed thereto the articles of association (if any) in the case of a company formed under part I of this Act, and in the case of a no-liability company, a copy of the memorandum for registration of the company, and also in any case where the company has rules other than those in the Seventh Schedule to this Act, a copy of the company's rules shall be forwarded to every member at his request, on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy, and if any company makes default in forwarding a copy of the memorandum of association or memorandum for registration and

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and articles of association or rules, as the case may be, to a member, in pursuance of this section, the company so making default shall, for each offence, incur a penalty not exceeding one pound.

**234.** (1) No company shall be registered under this Act under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being wound-up, and testifies its consent in such manner as the Registrar requires.

Prohibition against identity of name in company.  
25 & 26 Vic., c. 89, s. 20.  
37 Vic. No. 19, s. 19.  
60 Vic. No. 15, s. 40.

(2) If any company through inadvertence or otherwise is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company, where such company is a no-liability company, shall within such time after being served with a notice by the Registrar requiring such company so to do, as, having regard to the requirements of section two hundred and twenty-five of this Act, the Registrar deems reasonable, and, where such company is formed or registered under part I of this Act may, with the sanction of the Registrar, change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall sign a certificate of registration or incorporation, altered to meet the circumstances of the case.

(3) No such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name.

**235.** The shares or other interest of any member in a company registered under this Act shall be personal property, capable of being transferred in manner provided by the rules or regulations of the company, and shall not be of the nature of real estate, and each share shall be distinguished by its appropriate number.

Shares in company personal property.  
25 & 26 Vic., c. 89, s. 22.  
37 Vic. No. 19, s. 20.  
60 Vic. No. 15, s. 41.

**236.** Any transfer of the share or other interest of a deceased member of a company registered under this Act made by his personal representative shall, notwithstanding that such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Transfer by personal representative.  
25 & 26 Vic., c. 89, s. 24.  
37 Vic. No. 19, s. 22.  
60 Vic. No. 15, s. 42.

**237.** No notice of any trust expressed, implied, or constructive shall be entered on the register, or be receivable by the Registrar in the case of companies registered under this Act.

No entry of trusts on register.  
25 & 26 Vic., c. 89, s. 30.  
37 Vic. No. 19, s. 28.  
60 Vic. No. 15, s. 43.

**238.** A certificate, under the common seal of the company, specifying any shares or stock held by any member of any company registered under this Act shall be *prima facie* evidence of the title of the member to the shares or stock therein specified.

Certificate of shares.  
25 & 26 Vic., c. 89, s. 31.  
37 Vic. No. 19, s. 29.  
60 Vic. No. 15, s. 44.

**239.**

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Inspection of register.

25 & 26 Vic. c. 89,  
s. 32.

37 Vic. No. 19, s. 30.

60 Vic. No. 15, s. 45.

**239.** (1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company.

(2) Except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe for each inspection.

(3) Every such member or other person may require, in the case of a company registered under part I of this Act, a copy of the register or any part thereof, or of the list or summary of members as is in part I of this Act mentioned, and, in the case of a no-liability company, a list of the names and addresses of the members of the company, with the number of shares held by each, on payment of sixpence for every hundred words required to be copied.

(4) If such inspection or copy or list is refused, the company, and every director, manager, and secretary of the company who knowingly authorises or permits such refusal, shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues.

(5) In addition to the above penalty, any Judge sitting in chambers may, by an order, compel an immediate inspection of the register.

Power to close  
register.25 & 26 Vic., c. 89,  
s. 33.

37 Vic. No. 19, s. 31.

60 Vic. No. 15, s. 46.

**240.** Any company registered under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty, and in the case of a no-liability company, sixty days in each year.

Contracts, how made.  
30 & 31 Vic., c. 131,  
s. 37.

37 Vic. No. 19, s. 68.

60 Vic. No. 15, s. 47.

**241.** Contracts on behalf of any company registered under this Act may be made as follows (that is to say) :—

(1) Any contract which, if made between private persons, would be by law required to be in writing, and under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged.

(2) Any contract which, if made between private persons, would be by law required to be in writing and signed by the party to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged.

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- (3) Any contract which, if made between private persons, would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged.

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and its successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

**242.** Every company formed under part I, and every company registered under part II of this Act shall hold a general meeting within four months after its incorporation, and if such meeting is not held the company and every director, manager, or secretary of the company who knowingly authorises or permits such default shall be liable to a penalty not exceeding, in the case of a company formed under part I of this Act, five, and in the case of a no-liability company, two pounds a day for every day after the expiration of such four months until the meeting is held.

Company to hold meeting within four months after incorporation.  
30 & 31 Vic., c. 131, s. 39.  
37 Vic. No. 19, s. 70.  
60 Vic. No. 15, s. 49.

**243.** (1) Every limited and no-liability company registered under this Act shall keep a register of all mortgages and charges specifically affecting property or rights of the company, and shall enter in such register in respect of each mortgage or charge—

Register of mortgages.  
25 & 36 Vic., c. 89, s. 43.  
37 Vic. No. 19, s. 75.  
60 Vic. No. 15, s. 50.

- (a) a short description of the property or rights mortgaged or charged;
- (b) the amount of charge created;
- (c) the names of the mortgagees or persons entitled to such charge.

(2) If any property or rights of the company is or are mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds.

(3) The register of mortgages required by this section shall be open to inspection by any creditor or member of the company in the case of a limited company, and in the case of a no-liability company by any person at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director, manager, or secretary of the company authorising or knowingly and wilfully permitted such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues.

(4) In addition to the above penalty any Judge sitting in chambers may by order compel an immediate inspection of the register.



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Promissory-notes  
and bills of exchange.  
25 & 26 Vic. c. 89,  
s. 47.

37 Vic. No. 19, s. 79.  
60 Vic. No. 15, s. 51.

Prohibition against  
carrying on business  
with less than seven  
members.

25 & 26 Vic., c. 89,  
s. 48.  
37 Vic. No. 19, s. 80.  
60 Vic. No. 15, s. 52.

General meeting once at  
least in every year.  
25 & 26 Vic., c. 89, s. 49.  
37 Vic. No. 19, s. 81.  
60 Vic. No. 15, s. 53.

Definition of  
special  
resolution.

25 & 26 Vic., c. 89,  
s. 51.  
37 Vic. No. 19, s. 83.  
60 Vic. No. 15, s. 54.

**244.** A promissory-note or bill of exchange shall be deemed to have been made, drawn, accepted, or endorsed by any company registered under this Act, if made, drawn, accepted, or endorsed—

- (a) in the name of the company by any person acting under the authority of the company; or
- (b) by or on behalf or on account of the company by any person acting under the authority of the company.

**245.** If any company registered under this Act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same without the joinder in the action or suit of any other member.

**246.** A general meeting of every company registered under this Act shall be held once at least in every year.

**247.** (1) A resolution passed by a company registered under this Act shall be deemed to be special whenever—

- (a) a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the rules or regulations of the company to vote, as may be present in person or by proxy (in cases where by the rules or regulations of the company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given; and
- (b) such resolution has been confirmed by a majority of such members for the time being entitled according to the rules or regulations of the company to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given, and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed.

(2) At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same.

(3) Notice of any meeting shall for the purposes of this section be deemed to be duly given, and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the rules or regulations of the company.

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(4) In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the rules or regulations of the company.

**248.** In default of any rules or regulations on the subject—

- (a) every member shall have one vote;
- (b) a general meeting shall be held to be duly summoned when seven days notice thereof in writing has been served on every member in the manner in which notices are required to be served in the case of the companies formed or registered under part I of this Act by the Table marked A in the Second Schedule hereto, and, in the case of no-liability companies by the rules in the Seventh Schedule to this Act;
- (c) five members shall be competent to summon a meeting;
- (d) any person elected by the members present may preside as chairman of a meeting.

Provision where no regulations as to various matters.  
25 & 26 Vic., c. 89, s. 52.  
37 Vic. No. 19, s. 84.  
60 Vic. No. 15, s. 55.

**249.** (1) A copy of any special resolution whatever and of any extraordinary resolution for winding-up a company voluntarily under part I of this Act, which is passed by any company registered under this Act shall be printed and forwarded to the Registrar and be recorded by him.

Registration of special resolution.  
25 & 26 Vic., c. 89, s. 53.  
37 Vic. No. 19, s. 85.  
60 Vic. No. 15, s. 56.

(2) If such copy is not so forwarded within fifteen days from the date of the confirmation or passing as the case may be of the resolution, the company, and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such default, shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded.

**250.** (1) Where articles of association or rules have been registered a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association or rules which may be issued after the passing of such resolution.

Copies of special resolutions to be annexed to rules or articles.  
25 & 26 Vic., c. 89, s. 54.  
37 Vic. No. 19, s. 86.  
60 Vic. No. 15, s. 57.

(2) Where no articles of association or rules have been registered a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct.

(3) If any company makes default in complying with the provisions of this section, such company, and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such default, shall incur a penalty not exceeding one pound for each copy in respect of which such default is made.

**251.** Any company registered under this Act may by instrument in writing under its common seal appoint any person its attorney, either generally or in respect of any specified matters, in the case of a company

Appointment of attorney by company.  
25 & 26 Vic., c. 89, s. 55.  
37 Vic. No. 19, s. 87.  
60 Vic. No. 15, s. 58.

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company formed or registered under part I of this Act, to execute deeds on its behalf in any place wheresoever situate, and, in the case of a no-liability company, to act in any place wheresoever situate, and every deed signed by such attorney on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Examination of  
affairs of company by  
inspectors.

25 & 26 Vic., c. 89,  
s. 56.

37 Vic. No. 19, s. 88.

60 Vic. No. 15, s. 59.

**252.** The Governor may appoint one or more inspectors to examine into the affairs of any company registered under this Act, and to report thereon in such manner as the Governor may direct upon the applications following (that is to say):—

- (a) In the case of a banking company that has a capital divided into shares, upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued.
- (b) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued.
- (c) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Application for  
inspection to be  
supported by  
evidence.

25 & 26 Vic., c. 89,  
s. 57.

37 Vic. No. 19, s. 89.

60 Vic. No. 15, s. 60.

**253.** (1) The application shall be supported by such evidence as the Governor may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same.

(2) The Governor may also require the applicants to give security for payment of the cost of the inquiry before appointing any inspector.

Inspection of books  
and examination of  
officers of company.

25 & 26 Vic., c. 89,  
s. 58.

37 Vic. No. 19, s. 90.

60 Vic. No. 15, s. 61.

**254.** (1) All officers and agents of the company shall produce, for the examination of the inspectors, all books and documents in their custody or power, and any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly.

(2) If any officer or agent of the company refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

Result of examina-  
tion, how dealt with.

25 & 26 Vic., c. 89,  
s. 59.

37 Vic. No. 19, s. 91.

60 Vic. No. 15, s. 62.

**255.** (1) Upon the conclusion of the examination the inspectors shall report their opinion to the Governor, and such report shall be written or printed as the Governor directs.

(2) A copy of such report shall be forwarded by the Colonial Secretary to the registered office of the company, and a further copy shall at the request of the members, upon whose application the inspection was made, be delivered to them, or to any one or more of them.

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(3) All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members, upon whose application the inspectors were appointed: Provided that the Governor may direct the same to be paid out of the assets of the company, in which case the same shall become a debt from the company to such applicants, and may be recovered by process of law.

**256.** (1) Any company registered under this Act may, by special resolution, appoint inspectors for the purpose of examining into the affairs of the company, and the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor, but instead of making their report to the Governor, they shall make the same in such manner and to such persons as the company in general meeting directs.

Power of company to appoint inspectors.  
25 & 26 Vic., c. 89, s. 60.  
37 Vic. No. 19, s. 92.  
60 Vic. No. 15, s. 63.

(2) The officers and agents of the company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question as they would have incurred if such inspector had been appointed by the Governor.

**257.** A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Report of inspectors to be evidence.  
25 & 26 Vic., c. 89, s. 61.  
37 Vic. No. 19, s. 93.  
60 Vic. No. 15, s. 64.

**258.** All offences under this Act made punishable by any penalty may be prosecuted summarily before two or more justices of the peace.

Recovery of penalties.  
25 & 26 Vic., c. 89, s. 65.  
37 Vic. No. 19, s. 97.  
60 Vic. No. 15, s. 65.

**259.** Where a limited or no-liability company is plaintiff in any action, suit, or other legal proceedings, any Judge having jurisdiction in the matter may if it appears that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Provision as to costs in certain cases.  
25 & 26 Vic., c. 89, s. 69.  
37 Vic. No. 19, s. 99.  
60 Vic. No. 15, s. 66.

**260.** (1) Every company registered under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company and of the directors or managers of the company, in cases where there are directors or managers, to be duly entered in books, to be from time to time provided for the purpose.

Minutes of proceedings evidence of proceedings.  
25 & 26 Vic., c. 89, s. 67.  
37 Vic. No. 19, s. 98.  
60 Vic. No. 15, s. 67.

(2) Any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed, or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings.

(3) Until the contrary is proved every general meeting of the company or meeting of directors or managers, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had.

(4)

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(4) All appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualification.

Liquidator may accept shares as consideration for sale of property of company.

25 & 26 Vic. c. 89, s. 161.

37 Vic. No. 19, s. 212.

60 Vic. No. 15, s. 76.

**261.** (1) Where any company registered under this Act is proposed to be or is in the course of being wound-up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidator of the first-mentioned company may, with the sanction of a special resolution of the company by whom he was appointed, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement—

- (a) receive in compensation or part compensation for such transfer or sale, shares, debentures, policies, or other like interests in such other company for the purpose of distribution amongst the members of the company being wound-up; or
- (b) enter into any other arrangement whereby the members of the company being wound-up, may, in lieu of receiving cash shares, debentures, policies, or other like interests, or, in addition thereto, participate in the profits of, or receive any other benefit from, the purchasing company.

(2) Any sale made or arrangement entered into by the liquidator, in pursuance of this section, shall be binding on the members of the company being wound-up, subject to the provisions hereinafter contained.

(3) If any member of the company being wound-up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidator, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidator to do one of the following things as the liquidator may prefer, that is to say—

- (a) abstain from carrying such resolution into effect; or
- (b) purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidator in such manner as may be determined by special resolution.

(4) No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up the company or for appointing a liquidator, but if an order be made within a year for winding-up

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winding-up the company by or subject to the supervision of the Court under part I of this Act, such resolution shall not be of any validity unless it is sanctioned by the Court.

**262.** The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration under and in accordance with the provisions contained in part I of this Act in relation to arbitration.

Mode of determining price.  
25 & 26 Vic., c. 89, s. 162.  
37 Vic. No. 19, s. 213.  
60 Vic. No. 15, s. 77.

**263.** (1) Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would if made or done by or against any individual be deemed to be void or voidable in the event of his bankruptcy shall, if made or done by or against a company, be deemed in the event of such company being wound-up under part I of this Act, to be void or voidable in like manner.

Preferences, &c.  
25 and 26 Vic., c. 89, s. 164.  
37 Vic. No. 19, s. 215.  
60 Vic. No. 15, s. 75.

(2) Any conveyance or assignment made by a company registered under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

**264.** (1) In the winding-up under part I of this Act of any company, no-liability company, or other association or society either voluntarily or by or under the supervision of the Court, as the case may be, the same rules shall prevail and be observed as regards—

Application of rules of bankruptcy.  
25 and 26 Vic., c. 89, s. 162.  
37 Vic. No. 19, s. 215.  
55 Vic. No. 9, s. 5.  
60 Vic. No. 15, s. 75.

- (a) the respective rights of secured and unsecured creditors; and
- (b) the declaration and distribution of dividends; and
- (c) the proof and allowance of debts or claims against the assets of the company,

as may be in force for the time being under the laws of bankruptcy with respect to the estates of bankrupts.

(2) In the winding-up under part I of this Act of a no-liability company the same rules shall prevail and be observed as regards disclaimer of onerous property by the official liquidator, and as regards the consequences and incidents of such disclaimer, and as regards fraudulent preferences as may be in force for the time being under the laws of bankruptcy with respect to the estates of bankrupts.

(3) For the purposes of this and the last preceding section—

- (a) the presentation of a petition for winding-up a company in the case of a company being wound-up by the Court or under the supervision of the Court; and
- (b) a resolution for winding-up the company in the case of a voluntary winding-up under part I of this Act

shall be deemed to correspond with the act of bankruptcy in the case of an individual.

**265.** The Judges or any three of them may make such rules concerning the mode of proceeding to be had for winding-up companies in the Court as may from time to time seem necessary; but the

General rules.  
25 & 26 Vic., c. 89, s. 170.  
37 Vic. No. 19, s. 221.  
60 Vic. No. 15, s. 81.

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general practice of the Supreme Court in its equitable jurisdiction shall, so far as the same is applicable and not inconsistent with this Act or the rules made hereunder, apply to all proceedings for or in a winding-up.

## PART IV.

## REFERENCE TO DISTRICT COURT.

Winding-up may be referred to District Court.

37 Vic. No. 19, s. 145.

As to transfer of suit from one District Court to another.

*Ibid.* s. 146.

Parties aggrieved may appeal.

*Ibid.* s. 147.

Powers of District Court Judges to frame rules and orders.

*Ibid.* s. 148.

Scale of costs to be framed by the Judges.

*Ibid.* s. 149.

**266.** When the Court makes an order for winding-up a company under part I of this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court, and thereupon such District Court shall, for the purpose of winding-up the company, be deemed to be the Court within the meaning of this Act, and shall have for the purpose of such winding-up all the jurisdiction and powers of the Court.

**267.** If, during the progress of such winding-up, it is made to appear to the Court that the same could be more conveniently prosecuted in any other District Court, it shall be competent for the Court to transfer the same to such other District Court, and thereupon the winding-up shall proceed in such other District Court.

**268.** (1) If any party in a winding-up is dissatisfied with a determination or direction of a District Court Judge on any matter in such winding-up, such party may appeal from the same to the Court.

(2) Such party shall, within thirty days after such determination or direction, give notice of such appeal to the other party or his attorney, and also deposit with the registrar of the District Court the sum of ten pounds as security for the costs of the appeal, and the Court may make such final or other decree or order as it thinks fit, and may also make such order with respect to the costs of the said appeal as the Court may think proper, and such orders shall be final.

**269.** The District Court Judges shall frame the rules and orders for regulating the practice of the District Court under part I of this Act and forms of proceedings therein; and such rules, orders, and forms certified under the hands of such Judges, or of any three or more of them, shall be submitted to the Chief Judge or Judge in Equity, who may allow or disallow or alter the same; and the rules, orders, and forms, so allowed or altered, shall, from a day to be named by the Chief Judge or Judge in Equity, be in force in every District Court.

**270.** The District Court Judges mentioned in the foregoing section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings in a winding-up under part I of this Act, and such scale, certified under the

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the hands of such Judges, or any three or more of them, shall be submitted to the Chief Judge or Judge in Equity, who, from time to time, may allow, disallow, or alter the same, and the scale, so allowed or altered shall from a day to be named by the Chief Judge or Judge in Equity be in force in every District Court.

**271.** The District Court Judges, with the consent of the Chief Judge or Judge in Equity may, by an order, direct that after the date named in the order, any registrar or bailiff shall be paid as remuneration for the duties performed by him under this part of this Act such fixed or fluctuating allowance as may in each case be thought just.

Remuneration of registrars and bailiffs of District Courts in winding-up of companies.  
37 Vic. No. 19, s. 150.

PART V.

RECONSTRUCTED COMPANIES.

**272.** In this part of this Act, where not inconsistent with the context,—

Interpretation.  
57 Vic. No. 25, s. 2.

“Company” shall include a company or society formed by the reconstruction of any society registered under the Friendly Societies Act of 1873.

“New company” means the company formed by reconstruction of a pre-existing company.

“Old company” means the pre-existing company which has been reconstructed.

“Property” means real and personal property of every description, including uncalled capital, and all interest, claims, and rights, in, to, and out of property real and personal, and including obligations and things in action, also any right or claim against any person, and any other right or interest.

**273.** The Governor may, on the recommendation of the Chief Judge or Judge in Equity, by proclamation under his hand, and published in the Gazette, declare that the provisions of this part of this Act shall apply to any reconstructed company or corporation named in such proclamation from a date to be therein specified.

Power of Governor to proclaim companies.  
Ibid. s. 7.

**274.** Immediately upon the date specified in such proclamation all the property in New South Wales of the old company, vested in or belonging to or held in trust for or on behalf of such company at the date of the order sanctioning its reconstruction not expressly excepted by such order from passing to the new company, and which has not previously to such date as aforesaid been conveyed, transferred, released, or otherwise assured by the old company to which such property originally belonged shall, without any conveyance, assignment, transfer, assurance, application, or other instrument, and without payment of any fees

Assets, &c., of old company vested in new.  
Ibid. s. 3.



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fees or duties whatsoever, vest in, pass to, and become absolutely the property of the new company, so that such new company shall thereupon become and be deemed to be the owner, registered owner, registered proprietor, or person entitled, claiming, interested, or affected in the place and stead of the old company, for all the estate, right, title, interest, claim, and demand which the old company had therein at the date of such order, subject, nevertheless, to the equities (if any) affecting such property, and to the terms of any contract, agreement, or other dealing duly executed, made, or entered into with respect to such property since the date of such order.

Name of old company  
to be read as name of  
new company in all  
mortgages, &c.

57 Vic. No. 25, s. 4.

**275.** All mortgages, liens, securities, bonds, guarantees, agreements, contracts, deeds, documents, instruments, and writings whatsoever, relating to any real or personal property, or affecting any rights or interests therein, or giving any right or remedy to or against any person not expressly excepted from the operation of this part of this Act, and in which the name of the old company appears, and which were in existence at the date of such order as aforesaid, and have not, previously to the date specified in the proclamation as aforesaid, been released, discharged, conveyed, assigned, transferred, or otherwise assured by the old company, to which the same originally belonged, shall, immediately upon and from such last-mentioned date, be read and construed as if the name of the new company formed by reconstruction of the old company appeared therein as on and from the date of the incorporation of such new company instead of the name of the old company, and shall operate and take effect accordingly :

Provided that any debtor of the old company may set off any debt against the new company, which, but for the passing of this part of this Act, he would have been entitled to set off against the old company.

Actions, &c., by or  
against old company  
to be prosecuted and  
dealt with in name of  
or against new  
company.

*Ibid.* s. 5.

**276.** All actions, demands, caveats, notices, or other proceedings commenced, made, entered, or given by or on behalf of or against, or to the old company previously to the date specified in the proclamation as aforesaid, may be prosecuted, acted upon, or otherwise dealt with, by and in the name of, or against the new company formed by reconstruction of the old company, as if such actions, demands, caveats, notices, and proceedings had been commenced, made, entered, given, by, to, on behalf of, or against, the new company, and the benefit or burden of any decree, judgment, order, verdict, award, demand, caveat, notice, or proceeding to which any such old company was entitled or subject on such last-mentioned date, shall enure to or be binding upon the new company accordingly as from the date of the incorporation of such new company as aforesaid.

Bankers' books.

*Ibid.* s. 6.

**277.** The ledgers, day-books, cash-books, and other account-books of the old company passing to the new company under this part of this Act, being a bank in accordance with the interpretation clause  
of

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of the Evidence Act, 1898, shall be held to be bankers' books within the provisions of the Evidence Act, 1898, or any Act consolidating, modifying, or amending the same, and for the purposes of such Act to be and to have always been the ledgers, day-books, cash-books, and other account books of the new company.

PART VI.

MISCELLANEOUS PROVISIONS APPLICABLE TO CERTAIN COMPANIES.

**278.** (1) Any past or present member of any joint stock company may, in respect of any claim or demand which—

Members may sue and be sued by the company.

(a) such member may have, either solely or jointly with any other person, against such company, or the funds or property thereof; or

11 Vic. No. 56, s. 1.

(b) such company may have against such member solely or jointly with any other person, sue and be sued by such company, in the name of the officer thereto appointed, in any action, suit, or other proceeding.

(2) No action, suit, or other proceeding shall be in anywise affected by reason of any party or other person in whom any interest may be averred, or who may be in anywise interested or concerned in any such action, suit, or other proceeding, being or having been a member of such company.

(3) All such actions, suits, or other proceedings shall be conducted and have effect as if the same had been between strangers.

**279.** (1) Any banking, trading, or other company which may by any Act sue or be sued in the name of any officer or other person thereto appointed shall, on the death, resignation, or removal of such officer or person, proceed with as little delay as possible to elect some other person in his stead.

Officer to be replaced as soon as possible.  
6 Vic. No. 2.

(2) If such election does not take place within one month from the date of such death, resignation, or removal, then all the privileges of the said company whose officer has so died, resigned, or been removed, conferred upon it by any Act, shall utterly cease and determine, and thenceforth any person may sue or proceed against any individual members of such company so losing its privileges as aforesaid.

**280.** (1) No claim or demand which any member of any joint stock company may have in respect of—

Set-off.  
11 Vic. No. 56, s. 2.

(a) his share of the capital or joint stock thereof; or

(b) any dividends, interest, profits, or bonus payable or apportionable in respect of such share,

shall be capable of being set off against any demand which the company may have against such member on any other account.

(2)

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(2) All proceedings in respect of any other matter or thing may be carried on as if no such claim or demand as above-mentioned existed.

Member may be guilty of embezzling property of company.  
11 Vic. No. 56, s. 3.

**281.** (1) If any member of any such company or of any corporation—

(a) steals or embezzles any property belonging to such company or corporation; or

(b) commits any crime or offence against or with intent to injure or defraud such company or corporation,

such member shall be liable to prosecution for any such crime or offence.

(2) For the purposes of any such prosecution the property of such company or corporation may be stated as the property of the officer appointed to sue and be sued on behalf of such company or in the name of such corporation, as the case may be.

(3) Any such member may thereupon be lawfully convicted as if he were not a member of such company or corporation, any law, usage, or custom to the contrary notwithstanding.

Merits of any demand determined may be pleaded in bar.  
*Ibid.* s. 4.

**282.** In case the merits of any demand by or against any such company have been determined in any action, suit, or other proceeding by or against the officer of the company appointed as aforesaid, such proceedings may be pleaded in bar of any other action, suit, or other proceeding by or against the said company or officer for the same demand.

Provisions of Acts enabling company to sue and be sued in name of officer to apply to suits under this part of this Act.  
*Ibid.* s. 5.

**283.** All the provisions of any Act enabling any such company to sue and be sued in the name of an officer thereof relative to actions, suits, and proceedings commenced or prosecuted under the authority thereof shall be applicable to actions, suits, and proceedings commenced or prosecuted under the authority of this part of this Act.

Memorials to be recorded in office of Registrar-General.  
*Ibid.* s. 7.

**284.** (1) A memorial of the name of such officer appointed as aforesaid shall be registered in the office of the Registrar-General; and such memorial so registered shall, upon proof that such memorial is signed with the handwriting of the persons whose signatures appear thereto, be received in evidence in all proceedings and cases whatever as proof of the appointment and authority of such officer.

(2) In any action, suit, or other proceeding brought by any such officer the plaintiff or applicant shall not be nonsuited or fail for want of proof of the registration of such memorial unless it appear that no such memorial has been registered.

SCHEDULES.

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## SCHEDULES.

## FIRST SCHEDULE.

Date of Act.	Title of Act.	Extent of repeal.
3 Vic. No. 21...	An Act to make good certain contracts, &c. ...	The whole.
6 Vic. No. 2 ...	An Act for further facilitating proceedings by and against, &c., Companies, &c.	The whole.
11 Vic. No. 56 ..	An Act to enable any Joint Stock Company to sue any of its own Members, &c.	The whole
37 Vic. No. 19 ...	Companies Act, 1874 ... ..	The whole.
48 Vic. No. 14 ...	Companies Extra-Colonial Registers Act of 1884	The whole.
52 Vic. No. 14 ...	Companies Act of 1888 ... ..	The whole unrepealed portion.
55 Vic. No. 9 ...	Joint Stock Companies Arrangement Act, 1891	The whole, except section 3 and so much of sections 4 and 6 as applies to section 3.
57 Vic. No. 25...	Reconstructed Companies Act, 1894 ... ..	The whole.
60 Vic. No. 15 ...	No-Liability Mining Companies Act, 1896 ...	The whole.

## SECOND SCHEDULE.

## TABLE A.

37 Vic. No. 19.  
Schedule I.REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES OTHER THAN A  
NO-LIABILITY COMPANY.*Shares.*

1. If several persons are registered as joint holders of any share any one of such persons may give effectual receipts for any dividend payable in respect of such share.

2. Every member shall, on payment of one shilling or such less sum as the company in general meeting may prescribe, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon.

3. If such certificate is worn out or lost, it may be renewed on payment of one shilling or such less sum as the company in general meeting may prescribe.

*Call on shares.*

4. The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons, and at the times and places appointed by the directors.

5. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of ten pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment.

7. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

*Transfers*

*Companies.**Transfers of shares.*

8. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register-book in respect thereof.

9. Shares in the company shall be transferred in the following form:—

I, A.B., of \_\_\_\_\_, in consideration of the sum of \_\_\_\_\_ pounds paid to me by C.D., of \_\_\_\_\_, do hereby transfer to the said C.D. the share [or shares] numbered \_\_\_\_\_ standing in my name in the books of the \_\_\_\_\_ company to hold unto the said C.D., his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof, and I, the said C.D., do hereby agree to take the said share [or shares] subject to the same conditions. As witness our hands the \_\_\_\_\_ day of \_\_\_\_\_

10. The company may decline to register any transfer of shares made by a member who is indebted to them.

11. The transfer-book shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

*Transmission of shares.*

12. The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

14. Any person who has become entitled to a share, in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such shares.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such shares.

16. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

*Forfeiture of shares.*

17. If any member fails to pay any call on the day appointed for payment thereof the directors may, at any time thereafter during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with the interest and any expenses that may have accrued by reason of such non-payment.

18. The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid, and shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable), and shall also state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter before payment of all calls, interest, and expenses due in respect thereof has been made be forfeited by a resolution of the directors to that effect.

20. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at time of the forfeiture.

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*Companies.*

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22. A statutory declaration in writing that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

*Conversion of shares into stock.*

23. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

24. When any shares have been converted into stock the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests in the same manner, and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interest in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company and for other purposes as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not if existing in shares have conferred such privileges or advantages.

*Increase in capital.*

26. The directors may with the sanction of a special resolution of the company previously given in general meeting increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts as the company in general meeting directs, or if no direction is given as the directors think expedient.

27. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer if not accepted will be deemed to be declined, and after the expiration of such time or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

28. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls and the forfeiture of shares on non-payment of calls or otherwise as if it had been part of the original capital.

*General meetings.*

29. The first general meeting shall be held at such time, not being more than four months after the registration of the company, and at such place as the directors may determine.

30. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting, and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

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*Companies.*

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31. The above-mentioned general meetings shall be called ordinary meetings, all other general meetings shall be called extraordinary.

32. The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

33. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

34. Upon the receipt of such requisition, the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

*Proceedings at general meetings.*

35. Seven days' notice at the least specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business shall be given to the members in manner hereinafter mentioned, or in such other manner if any as may be prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

36. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend and the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

37. No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows, that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number the quorum shall be five, if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty.

38. If within one hour from the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of the members shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

39. The chairman (if any) of the Board of Directors shall preside as chairman at every general meeting of the company.

40. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

42. At any general meeting unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

43. If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting, and in the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

*Votes*

*Companies.*

*Votes of members.*

44. Every member shall have one vote for every share up to ten, he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

45. If any member is a lunatic or person of unsound mind or an incapable person as defined in the Lunacy Act of 1898, he may vote by his committee or other legal curator.

46. If one or more persons are jointly entitled to a share, the member whose name stands first in the register of members as one of the holders of such share and no other shall be entitled to vote in respect of the same.

47. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

48. Votes may be given either personally or by proxy.

49. The instrument appointing a proxy shall be in writing under the hand of the appointer, or, if such appointer is a corporation, under their common seal, and shall be attested by one or more witnesses. No person shall be appointed a proxy who is not a member of the company.

50. The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless it purports to appoint a proxy to act for the appointer during his absence from New South Wales.

51. Any instrument appointing a proxy shall be in the following form:—

Company (limited).

I, \_\_\_\_\_ of \_\_\_\_\_, being a member  
of the \_\_\_\_\_ company (limited), and entitled to \_\_\_\_\_ vote [or  
votes] hereby appoint \_\_\_\_\_, of \_\_\_\_\_ as my  
proxy to vote for me and on my behalf at the ordinary [or extraordinary as the  
case may be] general meeting of the company to be held on the \_\_\_\_\_ day  
of \_\_\_\_\_, and at any adjournment thereof [or at any meeting of the  
company that may be held in the year \_\_\_\_\_ or during my absence  
from the Colony of New South Wales].

As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_  
Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_

*Directors.*

52. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

53. Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

54. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

*Powers of directors.*

55. The business of the company shall be managed by the directors who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing Act or by these articles required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations (being not inconsistent with the aforesaid regulations or provisions) as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

56.



*Companies.*

56. The continuing directors may act notwithstanding any vacancy in their body.

*Disqualification of directors.*

57. The office of director shall be vacated—

If he holds any other office or place of profit under the company.

If he becomes bankrupt or insolvent.

If he is concerned in or participates in the profits of any contract with the company. But the above rules shall be subject to the following exceptions:—That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director, nevertheless he shall not vote in respect of such contract or work, and if he does so vote his vote shall not be counted.

*Rotation of directors.*

58. At the first ordinary meeting after the registration of the company, the whole of the directors shall retire from office, and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or if their number is not a multiple of three then the number nearest to one-third shall retire from office.

59. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

60. A retiring director shall be re-eligible.

61. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

62. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time, until their places are filled up.

63. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

64. Any casual vacancy occurring in the Board of Directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

65. The company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

*Proceedings of directors.*

66. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

67. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

68. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

*Companies.*

69. A committee may elect a chairman of their meetings. If no such chairman is elected or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

70. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

71. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

*Dividends.*

72. The directors may with the sanction of the company in general meeting declare a dividend to be paid to the members in proportion to their shares.

73. No dividend shall be payable except out of the profits arising from the business of the company.

74. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof, and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

75. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

76. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned, and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

77. No dividend shall bear interest as against the company.

*Accounts.*

78. The directors shall cause true accounts to be kept—

of the stock in trade of the company ;  
of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place ; and  
of the credits and liabilities of the company.

The books of account shall be kept at the registered office of the company ; and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

79. Once at the least in every year, the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year made up to a date not more than three months before such meeting.

80. The statement so made shall show arranged under the most convenient heads the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting ; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

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*Companies.*

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81. A balance-sheet shall be made out in every year and laid before the company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

82. A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

*Audit.*

83. Once at the least in every year the accounts of the company shall be examined and the correctness of the balance-sheet ascertained by one or more auditors.

84. The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

85. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

86. The auditors may be members of the company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company, and no director or other officer of the company is eligible during his continuance in office.

87. The election of auditors shall be made by the company at their ordinary meeting in each year.

88. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

89. Any auditor shall be re-eligible on his quitting office.

90. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

91. If no election of auditors is made in manner aforesaid, the Registrar may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

92. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

93. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; he may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the company.

94. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read, together with the report of the directors at the ordinary meeting.

*Notices.*

95. A notice may be served by the company upon any member, either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

96. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members, and notice so given shall be sufficient notice to all the holders of such share.

97. Any notice if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

## Companies.

Dr.	BALANCE SHEET of the			Company, made up to			, 189			Cr.
Capital and Liabilities.				Property and Assets.						
		£ s. d.	£ s. d.						£ s. d.	£ s. d.
I. Capital .....	Showing— The number of shares The amount paid per share If any arrears of calls, the nature of the arrear, and the names of the defaulters. The particulars of any forfeited shares	1 2 3 4		III. Property held by the company.	7	Showing— Immovable property distinguishing— (a) Freehold land (b) Freehold buildings (c) Leasehold Movable property distinguishing— (d) Stock-in-trade (e) Plant The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss				
II. Debts and liabilities of the company.	Showing— The amount of loans on mortgages or debenture bonds The amount of debts owing by the company distinguishing— (a) Debts for which acceptances have been given (b) Debts to tradesmen for supplies of stock-in-trade or other articles (c) Debts for law expenses (d) Debts for interest on debentures or other loans (e) Unclaimed dividends (f) Debts not enumerated above	5 6		IV. Debts owing to the company.	9	Showing— Debts considered good for which the company hold bills or other securities Debts considered good for which the company hold no security Debts considered doubtful and bad Any debt due from a director or other officer of the company to be separately stated				
VI. Reserve fund .....	Showing— The amount set aside from profits to meet contingencies			V. Cash and interest monies.	12	Showing— The nature of investment and rate of interest The amount of cash where lodged and if bearing interest				
VII. Profit and loss ..	Showing— The disposable balance for payment of dividends, &c. Claims against the company not acknowledged as debts Moneys for which the company is contingently liable				13					
Contingent liabilities .....										

*Companies.*

TABLE B.

Ss. 15, 166.

TABLE of fees to be paid to the Registrar in respect of companies formed or registered under part I of the Act.

	£	s.	d.
For registration of a company whose nominal capital does not exceed £1,000 a fee of...	5	0	0
For registration of a company whose nominal capital exceeds £1,000 the above fee of £5, with the following additional fees regulated according to the amount of nominal capital (that is to say)—			
	£	s.	d.
For every £1,000 of nominal capital or part of £1,000 after the first £5,000 up to £100,000	0	5	0
For every £1,000 of nominal capital or part of £1,000 after the first £100,000	0	1	0
For registration of any increase of capital made after the first registration of the company the same fees per £1,000 or part of a £1,000 as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration or afterwards any greater amount of fees than £50, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of a company whose number of members as stated in the articles of association does not exceed twenty	2	0	0
For registration of a company whose number of members as stated in the articles of association exceeds twenty but does not exceed one hundred	5	0	0
For registration of a company whose number of members as stated in the articles of association exceeds one hundred, but is not stated to be unlimited, the above fee of £5, with an additional 5s. for every fifty members or less number than fifty members after the first hundred.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every fifty members or less than fifty members of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than £20 in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered other than the memorandum of association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar	0	5	0
For every search for or in connection with any memorandum of association, or for or in connection with any document filed having reference to any company	0	1	0
For every certified copy of or extract from any document not exceeding six folios	0	5	0
For each additional folio after the first six folios	0	0	8

FORM

*Companies.*

FORM C.

FORM of statement referred to in division 3 of part I of the Act.

- \*The capital of the company is           divided into           shares of           each.  
 The number of shares issued is  
 Calls to the amount of           pounds per share have been made under which  
 the sum of           pounds has been received.  
 The liabilities of the company on the first day of January [*or* July] were—  
 Debts owing to sundry persons by the company—  
     On judgment £  
     On specialty £  
     On notes or bills £  
     On simple contracts £  
     On estimated liabilities £  
 The assets of the company on that day were—  
     Government securities [*stating them*] £  
     Bills of exchange and promissory-notes £  
     Cash at the bankers £  
     Other securities £

THIRD SCHEDULE.

FORM A.

37 Vic. No. 13,  
Schedule II.

MEMORANDUM of association of a company limited by shares.

- 1st. The name of the company is "The Eastern Steam-packet Company (Limited)."  
 2nd. The registered office of the company will be situate in Sydney.  
 3rd. The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."  
 4th. The liability of the members is limited.  
 5th. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.  
 We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses, and descriptions of subscribers.						Number of shares taken by each subscriber.
1. John Jones, of	, merchant	...	...	...	...	200
2. John Smith, of	, "	...	...	...	...	25
3. Thomas Green, of	, "	...	...	...	...	30
4. John Thompson, of	, "	...	...	...	...	40
5. Caleb White, of	, "	...	...	...	...	15
6. Andrew Brown, of	, "	...	...	...	...	5
7. Cæsar White, of	, "	...	...	...	...	10
Total shares taken ... ..						325

Dated the 22nd day of November, 18 .

Witness to the above signatures—

(A.B., No. 13, Pitt-street, Sydney.)

\* If the company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.

FORM

*Companies.*

## FORM B.

MEMORANDUM and articles of association of a company limited by guarantee, and not having a capital divided into shares.

*Memorandum of association.*

- 1st. The name of the company is "The Mutual Marine Association (Limited)."
- 2nd. The registered office of the company will be situate in Sydney.
- 3rd. The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."
- 4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding ten pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

*Names, addresses, and descriptions of subscribers.*

- |                      |           |
|----------------------|-----------|
| 1. John Jones, of    | merchant. |
| 2. John Smith, of    | "         |
| 3. Thomas Green, of  | "         |
| 4. John Thompson, of | "         |
| 5. Caleb White, of   | "         |
| 6. Andrew Brown, of  | "         |
| 7. Cæsar White, of   | "         |

Dated the 22nd day of November, 18

Witness to the above signatures—  
(A.B., No. 13, Pitt-street, Sydney.)

## ARTICLES of association to accompany preceding memorandum of association.

1. The company, for the purpose of registration, is declared to consist of five hundred members.
2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

*Definition of members.*

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

*General meetings.*

4. The first general meeting shall be held at such time, not being more than three months after the incorporation of the company, and at such place as the directors may determine.
5. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting, and if no other time or place is prescribed a general meeting shall be held on the first Monday in February in every year at such place as may be determined by the directors.
6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
7. The directors may, whenever they think fit, and they shall upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

*Companies.*

8. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

9. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition the requisitionists or any other five members may themselves convene a meeting.

*Proceedings at general meetings.*

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows, that is to say, if the members of the company at the time of the meeting do not exceed ten in number the quorum shall be five, if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting if convened upon the requisition of the members shall be dissolved. In any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum of members is not present it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their own number to be chairman of such meeting.

16. The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolutions of the company in general meeting.

*Votes of members.*

19. Every member shall have one vote, and no more.

20. If any member is a lunatic, or a person of unsound mind, or an incapable person as defined in the Lunacy Act of 1898, he may vote by his committee or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointer, or if such appointer is a corporation under its common seal.



*Companies.*

23. No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following terms—

Company (Limited).

I, \_\_\_\_\_ of \_\_\_\_\_ being a member of the \_\_\_\_\_ Company (limited) hereby appoint \_\_\_\_\_ of \_\_\_\_\_ my proxy to vote for me and on my behalf at the ordinary [or extraordinary *as the case may be*] general meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof to be held on the \_\_\_\_\_ day of \_\_\_\_\_ next [or at any meeting of the company that may be held in the year \_\_\_\_\_].

As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_  
Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_

*Directors.*

25. The number of directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

*Power of directors.*

27. The business of the company shall be managed by the directors who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting. But no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

*Election of directors.*

28. The directors shall be elected annually by the company in general meeting.

*Business of company.*

[*Here insert rules as to mode in which business of insurance is to be conducted.*]

*Accounts.*

29. The accounts of the company shall be audited by a committee of five members to be called the audit committee.

30. The first audit committee shall be nominated by the directors out of the body of members.

31. Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

32. The audit committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

33. The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company. They may at the expense of the company employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the company.

34. The audit committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs; and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read, together with the report of the directors at the ordinary meeting.

35.

*Companies.**Notices.*

35. A notice may be served by the company upon a member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

36. Any notice if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

*Winding-up.*

37. The company shall be wound-up voluntarily whenever an extraordinary resolution as defined by "The Companies Act, 1899" is passed requiring the company to be wound-up voluntarily.

*Names, addresses, and descriptions of subscribers.*

1. John Jones, of	merchant.
2. John Smith, of	"
3. Thomas Green, of	"
4. John Thompson, of	"
5. Caleb White, of	"
6. Andrew Brown, of	"
7. Caesar White, of	"

Dated the 22nd day of November, 18 .

Witness to the above signatures—  
(A.B., Pitt-street, Sydney.)

## FORM C.

Memorandum and articles of association of a company limited by guarantee, and having a capital divided into shares.

*Memorandum of association.*

1st. The name of the company is "The Royal Hotel Company (Limited)."

2nd. The registered office of the company will be situate in Sydney.

3rd. The objects for which the company is established are "the providing hotels for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound-up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding twenty pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

*Names, addresses, and descriptions of subscribers.*

1. John Jones, of	merchant.
2. John Smith, of	"
3. Thomas Green, of	"
4. John Thompson, of	"
5. Caleb White, of	"
6. Andrew Brown, of	"
7. Caesar White, of	"

Dated the 22nd day of November, 18 .

Witness to the above signatures—  
(A.B., Pitt-street, Sydney.)

## ARTICLES

## Act No. 40, 1899.

*Companies.*

ARTICLES of association to accompany preceding memorandum of association.

1. The capital of the company shall consist of five hundred thousand pounds divided into five thousand shares of one hundred pounds each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of table A shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses, and descriptions of subscribers.						Number of shares taken by each subscriber.
1. John Jones, of	merchant	...	...	...	...	290
2. John Smith, of	"	...	...	...	...	25
3. Thomas Green, of	"	...	...	...	...	30
4. John Thompson, of	"	...	...	...	...	40
5. Caleb White, of	"	...	...	...	...	15
6. Andrew Brown, of	"	...	...	...	...	5
7. Cæsar White, of	"	...	...	...	...	10
Total shares taken						325

Dated this 22nd day of November, 18 .

Witness to the above signatures—  
(A.B., Pitt-street, Sydney.)

## FORM D.

MEMORANDUM and articles of association of an unlimited company having a capital divided into shares.

*Memorandum of association.*

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in Sydney.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotyped plates, of which method John Smith, of London, is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

*Names, addresses, and descriptions of subscribers.*

1. John Jones, of	merchant.
2. John Smith, of	"
3. Thomas Green, of	"
4. John Thompson, of	"
5. Caleb White, of	"
6. Andrew Brown, of	"
7. Abel Brown, of	"

Dated 22nd day of November, 18 .

Witness to the above signatures—  
(A.B., Pitt-street, Sydney.)

ARTICLES

*Companies.*

ARTICLES of association to accompany the preceding memorandum of association.

*Capital of the company.*

The capital of the company is two thousand pounds divided into twenty shares of one hundred pounds each.

*Application of Table A.*

All the articles of Table A shall be deemed to be incorporated with these articles and to apply to the company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names:—

Names, addresses, and descriptions of subscribers.						Number of shares taken by each subscriber.
1. John Jones, of	merchant	...	...	...	...	1
2. John Smith, of	"	...	...	...	...	5
3. Thomas Green, of	"	...	...	...	...	2
4. John Thompson, of	"	...	...	...	...	2
5. Caleb White, of	"	...	...	...	...	3
6. Andrew Brown, of	"	...	...	...	...	4
7. Abel Brown, of	"	...	...	...	...	1
Total shares taken						18

Dated the 22nd day of November, 18 .

Witness to the above signatures,—  
(A.B., Pitt-street, Sydney.)

FORM B (1) as required by section 20 of the Act.

Summary of capital and shares of the company made up to the day of

(1) Nominal capital £	divided into	shares of £	each.
	viz. :—	Issue	shares = £
		"	" = £
		"	" = £
		Total	... .. £
(2) Number of shares taken up to the	day of	, 1 ,	
	viz. :—	Issue	shares.
		"	"
		"	"
		Total	...
(3) There has been £	per share called up on	shares of	issue = £
"	"	"	" = £
"	"	"	" = £
		(a) Total	... .. £

(a) The totals of Nos. 3 and 4 should agree.

(4)

(4)	{	Amount of calls received	...	..	...	...	...	...	£
		Amount of calls unpaid	...	...	...	...	...	...	£
									<hr/>
						(a)	Total	...	£
									<hr/>
(5)		Total amount (if any) agreed to be considered as paid on					shares,	} (b)	
		as per agreement dated the		day of		, 1	...		£
									<hr/>
(6)	{	Number of shares forfeited since date of last return	...		...		...		
		Total number of shares forfeited	...	...	...	...	...		
		Total amount paid on forfeited shares	...	...	...	...	...	£	

..... } Directors.  
 ..... }  
 ..... Manager or Secretary.

N.B.—Every alteration or erasure must be initialed.

List of persons holding shares in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 1\_\_\_\_, and of persons who have held shares therein at any time during the year immediately preceding the said \_\_\_\_\_ day of \_\_\_\_\_, showing their names, addresses, and occupations, and an account of the shares so held.

[illegible]

(a) Christian names, addresses, and occupations should be given *in full*.  
 (b) "*Number of shares*" means the aggregate, not the distinctive number.  
 (c) This column should be added up. The total should agree with the number of shares stated in the summary to have been taken up.  
 (d) The list should include all transfers since the date of the last list, and the date of registration of each transfer should be given, as well as the number of shares transferred. The particulars should be placed opposite the name of the transferrer, and not opposite that of the transferee.  
 (e) Should there have been no transactions under these headings since last list, the word "*nil*" should be written across each column and initialled.

*Companies.*

FOURTH SCHEDULE.

60 Vic. No 15,  
Schedule I.

THIS is to certify that a mining company called " no-liability " has been duly registered under the " Companies Act, 1899," a memorandum for registration pursuant to the said Act having been duly lodged in the office of the registrar of joint stock companies, and published in the Government Gazette of the day of , and in the newspaper of the day of [if any other newspaper mention it] and copies of the said Government Gazette and newspaper [if a copy of rules has been forwarded, add and also a copy of rules of the company] have been duly forwarded to the said office. The date of registration of the said company is the day of .

Given under my hand this day of

A.B.,

Registrar of joint stock companies.

FIFTH SCHEDULE.

*Ibid.* Schedule II.

*Memorandum for registration of a no-liability company.*

- (1) The name of the company is to be " no-liability."
- (2) The first place of operations (or intended operations) is at
- (3) The first registered office of the company will be situated at
- (4) The value of the company's intended property (or property held in trust for the company *as the case may be*) including the plant and machinery is
- (5) The amount of money at the credit of the company, or any person on its behalf, is £ , and the total liability of the company, or which the company is intended to assume or undertake, is
- (6) The nominal capital of the company is in shares of each.
- (7) The number of contributing shares subscribed for is
- (8) The name of the provisional [or first] manager is
- (9) Ten per centum of the contributing capital has been duly paid up in cash.
- (10) The only contracts entered into on behalf of this company are those of which the particulars are stated hereunder.

[If the memorandum be lodged on behalf of a company seeking registration under the one hundred and ninety-seventh section of the Act a statement in the following form or to the like effect is to be added, otherwise not.]

- (11) A majority in number of the members in the company, such majority holding at least one-half of the issued capital, and all the creditors of, and persons entitled to enforce any claim against the company, have consented to its incorporation as a no-liability company.

Dated this day of 18 .

We, the persons whose names and addresses are subscribed hereby, apply to register [here insert name of company] as a no-liability company.

[Witnesses.]

[Signatures.]

*Declaration verifying memorandum for registration.*

I, A.B., do hereby solemnly declare and affirm that--

- (1) I am the manager [or provisional manager] of the said intended company.
- (2) The above statements are, to the best of my belief and knowledge, true in every particular.

And I make this solemn declaration as to the matters aforesaid according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Declared before me this day of , 18 .

A.B.

Manager [or provisional manager].

SIXTH

*Companies.*

60 Vic. No. 15,  
Schedule III.

## SIXTH SCHEDULE.

## FORM A.

[*Name of company.*]

I, THE undersigned, hereby give notice that an increase in the capital of the abovenamed company was, on the      day of      resolved on by the issue of      new shares of      each, in addition to the      shares theretofore existing in the company [*if any of the new shares are preference shares, or fully paid-up shares, or partly paid-up shares so state, and state also the terms upon which they are issued.*]

Ten per centum of the contributing capital represented by such new shares has been duly paid up to the company in cash [*if no contributing capital is represented by such new shares notice to so state, and this paragraph to be omitted*].

Dated this      day of      18      .

A.B.,  
Manager [*or Secretary*].

## FORM B.

I, A.B., of      , do hereby solemnly declare and affirm that—

1. I am the manager [*or secretary*] of the abovenamed company.
2. The statements contained in the annexed copy notice are, to the best of my knowledge and belief, true in every particular.

And I make [*follow form of statutory declaration in Fifth Schedule.*]

## FORM C.

*Certificate of Registrar of increase of capital.*

THIS is to certify that an increase in the capital of [*name of company*] no liability by the issue of      new shares of      each in addition to the      shares theretofore existing in the company has been legally and properly made, and such new shares may now be allotted and issued.

[*If any of the new shares are preference shares or fully paid-up or partly paid-up shares the certificate to so state.*]

*Ibid.* Schedule IV.

## SEVENTH SCHEDULE.

*Members.*

1. When two or more persons are registered as the joint holders of any shares, any notice required by these rules to be served on a member may be served on any of such holders, and such notice shall be deemed to be served on all the holders of the shares. Any one of such joint holders may give effectual receipts for any dividends payable in respect of such shares.

2. The company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not be bound to recognise any equitable or other claim to or interest in such share on the part of any other person, save as herein provided.

*Shares.*

3. The certificates for shares shall be issued under the common seal of the company and signed by two directors, and countersigned by the manager or secretary or some other person appointed by the directors for that purpose.

4. Every member shall be entitled to one certificate for the shares registered in his name, or to several certificates each for a part of such shares, and for the purpose of this rule several joint holders shall be deemed one member: Provided that the sum of sixpence may be charged by the company for every certificate after the first in any case where a member requires more than one certificate.

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*Companies.*

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5. If any such certificate be defaced, then, upon production thereof to the directors, they may order the same to be cancelled, and may issue a new certificate in lieu thereof; and if any certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, and on such indemnity as the directors shall deem sufficient being given, a new certificate, in lieu of the one lost or destroyed, shall be given to the person entitled to such lost or destroyed certificate.

6. The certificate for shares registered in the names of two or more persons may be delivered to any of such persons.

*Transfer of shares.*

7. The instrument of transfer of any share shall be signed both by the transferror and transferee; the transferror shall be deemed to remain the holder of such share until the name of the transferee is entered in the register in respect thereof.

8. The instrument of transfer of shares shall be in the following form, or as near thereto as circumstances will admit—

I, A.B., of \_\_\_\_\_, in consideration of the sum of \_\_\_\_\_ paid to me by C.W., of \_\_\_\_\_ [hereinafter called transferee], do hereby transfer to the said transferee the share or shares numbered \_\_\_\_\_ standing in my name in the register of the \_\_\_\_\_, no-liability, to hold unto the said transferee, his executors, administrators, and assigns, subject to the conditions on which I held the same immediately before the execution hereof; and I, the said transferee, do hereby agree to take the said share or shares, subject to the said conditions. As witness our hands this \_\_\_\_\_ day of \_\_\_\_\_

9. Every instrument of transfer shall be left at the office for registration accompanied by a certificate of the shares to be transferred, and such other evidence (if any) as the directors may require to prove the title of the transferror or his right to transfer the shares.

*Transmission of shares.*

10. The executors or administrators of a deceased member shall be the only person recognised by the company as having any title to his or her shares.

11. Any person becoming entitled to any shares in consequence of the death, insolvency, or bankruptcy of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the directors.

12. Any person becoming entitled to any shares in consequence of the death, insolvency, or bankruptcy of any member, or in consequence of the marriage of a female member, may, instead of being himself registered, elect to have some person named by him registered as a transferee of such shares.

*Calls.*

13. The directors may from time to time, subject to the provisions of the Act, make such calls upon the members in respect of all moneys unpaid upon their shares as they shall think proper: Provided always that no such call shall exceed one-tenth of the nominal value of the share.

14. A resolution authorising a call shall fix the amount of the call, and the date of its payment.

15. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

16. The notice of a call required by the Act to be given to each member shall specify the person to whom the call is payable.

*General meetings.*

17. The first general meeting of the company shall be held at such time, not being more than four months after the registration of the company, and at such place as the directors shall determine. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting, and if no time or place is prescribed as aforesaid, then at such time and place as the directors shall determine.

18.



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*Companies.*

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18. The abovementioned general meetings shall be called ordinary meetings, all other meetings of the company shall be called extraordinary meetings.

19. The directors may, whenever they shall think fit, and they shall, upon a requisition made in writing by not less than one-twelfth in number of the members of the company, convene an extraordinary general meeting.

20. Any such requisition shall express the object of the meeting required, and shall be signed by the members making the same, and shall be left at the office of the company. The meeting shall be convened for the purposes specified in the requisition, and (if convened otherwise than by the directors) for those purposes only.

21. In case the directors shall, for fourteen days after such requisition has been so left at the office as aforesaid, fail to convene an extraordinary meeting, to be held within twenty-one days of such leaving, the members making the requisition, or any other members, being not less than one-twelfth in number of the members, may themselves convene a meeting, to be held within six weeks of the date of leaving the requisition at the office as aforesaid.

22. Seven clear day's notice at the least of every general meeting, specifying the place, day, and hour of meeting, and in case of special business the general nature of such business, shall be given to the members as hereinafter provided; but the accidental omission to give such notice to any of the members, or the non-receipt of such notice by any member, shall not invalidate any proceedings at any such meeting.

*Proceedings at general meetings.*

23. The business of an ordinary meeting shall be to receive and consider the profit and loss account, and the balance-sheet and the reports of the directors and auditors; to elect directors and other officers in the place of those retiring by rotation; to authorise and declare dividends, and to transact any other business which under the rules of the company ought to be transacted at an ordinary meeting, and any business which is brought under consideration by the report of the directors issued with the notice convening such meeting. All other business transacted at an ordinary meeting, and all business transacted at an extraordinary meeting shall be deemed special.

24. No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say—if the persons who hold shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the number of the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, provided that no quorum shall in any case exceed twenty: Provided also that in ascertaining whether a quorum is present at any general meeting, all members represented by proxy shall be counted.

25. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of members shall be dissolved, but in any other case it shall stand adjourned till the same day in the next week at the same time and place, and notice thereof shall be given by advertisement in a newspaper circulating in the town or district in which the registered office is situated, and if at such adjourned meeting a quorum as hereinbefore provided is not present, those members who are present shall be a quorum, and may transact the business for which the meeting was called.

26. The chairman of the directors shall be entitled to take the chair at every general meeting, or if there be no such chairman, or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding such meeting, the members present shall choose another director as chairman, and if no director be present, or if all the directors present decline to take the chair, then the members present shall choose one of their number to be chairman.

27. Every question submitted to a meeting shall be decided in the first instance by a show of hands, and in the case of an equality of votes the chairman shall, both on the show of hands and at the poll, have a casting vote, in addition to the votes to which he may be entitled as a member.

*Companies.*

28. At any general meeting, unless a poll is demanded by at least three shareholders, a declaration by the chairman that a resolution has been carried or carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the book of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

29. If a poll is demanded as aforesaid, it shall be taken in such a manner and at such time and place as the chairman of the meeting directs, and either at once or after an adjournment, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

30. The chairman of a general meeting may with the consent of the meeting adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

31. Any poll duly demanded on the election of a chairman or on any question of adjournment shall be taken at the meeting and without adjournment.

*Votes of members.*

32. Every member shall have one vote for every share held by him up to ten, he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every fifteen shares beyond the first hundred shares.

33. If any member is a lunatic, or person of unsound mind, or an incapable person, as defined in the Lunacy Act of 1898, he may vote by his committee or other legal curator.

34. If two or more persons are jointly entitled to any shares the member whose name stands first on the register of members as one of the holders of such shares, and no other, shall be entitled to vote in respect of the same.

35. No member shall be entitled to vote at any general meeting unless all calls payable on his shares have been paid.

36. Votes may be given either personally or by proxy.

37. The instrument appointing a proxy shall be in writing or print under the hand of the appointer or his attorney, or if such appointer be a corporation under its common seal. No person shall be appointed a proxy who is not a member in the company and entitled to vote.

38. The instrument appointing a proxy, and the power of attorney (if any) under which it is executed, shall be deposited at the office of the company not less than twenty-four hours before the time of holding the meeting at which the person named in such instrument purposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless it purports to appoint a proxy to act for the appointer during his absence from New South Wales.

39. Any instrument appointing a proxy shall be as nearly as circumstances will permit in the form or to the effect following:—

Name of company.

I, \_\_\_\_\_ of \_\_\_\_\_, being a member in the  
 No-liability, hereby appoint \_\_\_\_\_ of \_\_\_\_\_, my proxy, to vote for me and  
 on my behalf at the [ordinary or extraordinary] general meeting of the company  
 to be held on the \_\_\_\_\_ day of \_\_\_\_\_, and at any adjournment thereof  
 [or at any meeting of the company that may be held in the year \_\_\_\_\_ or  
 during my absence from New South Wales].

As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_

Witness—

*Directors.*

40. No person shall be qualified to be a director who is not a member in the company.

41. The number of the directors shall be not less than three or more than seven until otherwise determined by a general meeting.

*Companies.*

42. The first directors of the company shall be appointed by the subscribers to the memorandum for registration, and failing and until such appointment the subscribers to the memorandum for registration shall be the first directors of the company, and at the first general meeting of the company after the incorporation of the company the whole of the first directors of the company shall retire from office, and new directors shall be elected, and at the first ordinary meeting in every subsequent year reckoned from 1st January to 1st January one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third (but not exceeding one-third) shall retire from office.

43. The one-third or other number as aforesaid to retire at the first general meeting at which directors are to retire shall be determined by lot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire. As between two or more who have been in office an equal length of time, the director to retire shall, in default of agreement between them, be determined by lot. The length of time a director has been in office shall be computed from his last election or appointment where he has previously vacated office.

44. A retiring director shall be eligible for re-election.

45. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of members to be directors, and may fill up other vacancies.

46. If at any meeting at which an election of directors ought to take place the places of the retiring directors are not filled up, subject to article number twenty-five of these presents, the meeting shall stand adjourned till the same day in the next week, at such hour and place as the majority of members present at the meeting shall decide; and if at such adjourned meeting the places of the retiring directors are not filled up, the retiring directors, or such of them as have not had their place filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

47. The company may by special resolution remove any director before the expiration of his period of office, and may, by ordinary resolution, appoint another qualified person in his stead. The person so appointed shall hold office during such time only as the director, in whose place he is appointed, would have held the same if he had not been removed.

48. Any casual vacancy occurring among the directors may be filled by the directors, but any person so chosen shall retain his office only so long as the vacating director would have retained the same if no vacancy had occurred.

49. The office of director shall be vacated—

- (a) If he become bankrupt, or suspend payment, or assign his estate for the benefit of his creditors.
- (b) If he be found, or declared, or become lunatic, or of unsound mind, or an incapable person, as defined in the Lunacy Act of 1898.
- (c) If he absent himself from the meetings of the directors during a period of three calendar months without special leave of absence from the directors.
- (d) If by notice in writing to the company he resigns his office.

50. The continuing directors may act, notwithstanding any vacancy in their body, but so that if the number fall below the minimum above fixed the directors shall not, except for the purpose of filling vacancies, act so long as the number is below the minimum.

*Proceedings of directors.*

51. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined two directors shall form a quorum. Questions arising at any of the meetings shall be decided by a majority of votes. In case of equality of votes the chairman shall have a second or casting vote.

52. A director may at any time, and the manager or secretary shall at the request of any two directors, convene a meeting of directors.

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53. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present at the appointed time for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

54. All acts done by any meeting of the directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

*Powers of directors.*

55. The management of the business of the company shall be vested in the directors who may exercise all such powers and do all such acts and things as may be exercised or done by the company, and are not by these rules or by the Act directed or required to be exercised or done by the company in general meeting, but subject to the provisions of the Act and of these said rules and to any regulations from time to time made by the company in general meeting: Provided that no regulation so made shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

*Remuneration of directors.*

56. The remuneration of the directors shall be determined by the company in general meeting.

*The seal.*

57. The directors shall provide for the safe custody of the common seal, and the said seal shall not be used except by the authority of the directors previously given, and every instrument to which the seal is affixed shall be signed by two directors and countersigned by the manager or secretary or some other person appointed by the directors.

*Dividends.*

58. The directors may declare dividends to be paid to the members in proportion to their shares, and dividends shall be paid on all shares alike, irrespective of the amount paid up thereon.

59. No dividend shall be payable except out of the profits arising from the business of the company.

60. The directors may, before declaring any dividend, set aside out of the profits of the company such sum as they may think proper as a reserve fund to meet contingencies or for equalising dividends, for repairing or maintaining the works and machinery connected with the business of the company or any part thereof, and the directors may invest the sum so set apart upon such securities as they may select.

61. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter provided for giving notices, and all dividends unclaimed for four years after having been declared may be forfeited by the directors for the benefit of the company.

62. The directors may deduct from the dividends payable to any member the amount of any call payable on his shares.

63. No dividend shall bear interest as against the company.

*Accounts.*

64. The directors shall cause true accounts to be kept of the sums of money received and expended by the company, and of the matter in respect of which such receipt and expenditure takes place, and of the assets, credits, and liabilities of the company.

65. The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

66. At each of the ordinary meetings the directors shall lay before the company a profit and loss account and a balance-sheet containing a summary of the property and liabilities

*Companies.*

liabilities of the company made up to a date not more than two calendar months before the meeting from the time when the last preceding account and balance-sheet were made, or in the case of the first account and balance-sheet from the incorporation of the company.

*Audit.*

67. Once at least in every year the accounts of the company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

68. The auditors shall be appointed and their remuneration fixed by the company in general meeting in each year. If one auditor only is appointed all the provisions herein contained relating to auditors shall apply to him. The first auditor or auditors may be appointed by and their remuneration fixed by the directors.

69. Any auditor quitting office shall be eligible for re-election.

70. The auditors may be members, but no person shall be eligible as an auditor who is interested otherwise than as a member in any transaction of the company, and no director or other officer of the company shall be eligible during his continuance in office.

71. The auditors shall be supplied with copies of the profit and loss account and balance-sheet intended to be laid before the company in general meeting ten days at least before the meeting to which the same are to be submitted, and it shall be their duty to examine the same, with the accounts and vouchers relating thereto, and to report to the company in general meeting thereon.

72. The auditors shall have a list delivered to them of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company, and they may examine the directors, manager, and officers of the company in relation to such accounts.

*Notice.*

73. Any notice may be served by the company upon any member, either personally or by sending it through the post in a prepaid envelope, addressed to such member at his address as entered in the register of members.

74. All notices to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members, and notice so given shall be sufficient notice to all the holders of such share.

75. Any notice sent by post shall be deemed to have been served on the day after the same shall have been posted, and in proving such service it shall be sufficient to prove that the notice was properly addressed, and that it was put into the post office (postage prepaid).

60 Vic. No. 15,  
Schedule V.

## EIGHTH SCHEDULE.

*Fees chargeable under this Act in respect of no-liability companies.*

	£	s.	d.
For registration of a company	1	0	0
For certificate of registration of a company	0	5	0
For certificate of increase of capital	0	5	0
For any other certificate required under this Act	0	5	0
For registering notice of liquidation and of appointment of liquidator	0	5	0
For registration of any document required by the Act to be registered or tendered for registration (other than as herein is specified)	0	5	0
For every search for or in connection with any memorandum for registration of any company, or for or in connection with any document filed having reference to any company	0	1	0
For every examined copy of any document not exceeding six folios	0	5	0
For each additional folio after the first six folios	0	0	4
For every extract from any document, per folio	0	0	4

Act